

The Law Regarding Universities in Saudi Arabia and England: A Comparative Study

Volume I

**Submitted by Hussain Nasser Al-Sharif to the University of
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Transliteration

The brief transliteration of some Arabic letters that follows is designed both to help English readers pronounce some of the Arabic names included in the text and also to aid Arabic speakers in the accurate pronunciation of original names with which they may not be familiar.

Symbols of Sounds in Standard Classical Arabic

The Consonants

Arabic	English
ء	' = a glottal stop
ب	B = a voiced bilabial stop
ت	T = a voiceless dental non-emphatic stop
ث	Th = a voiceless dental fricative
ج	J = a voiced palatal fricative
ح	H = a voiceless pharyngeal fricative
خ	Kh = a voiceless uvular fricative
د	D = a voiced dental non-emphatic stop

ذ	Dh = a voiced dental non-emphatic fricative
ر	R = a voiced alveolar trill
ز	Z = a voiced denti-alveolar fricative
س	S = a voiceless alveolar non-emphatic fricative
ش	Sh = a voiceless palatal fricative
ص	Ṣ = a voiceless alveolar emphatic fricative
ض	Ḍ = a voiced dental emphatic stop
ط	Ṭ = a voiceless dental emphatic stop
ظ	Ẓ = a voiced dental emphatic fricative
ع	‘ = a voiced pharyngeal fricative
غ	Gh = a voiced uvular fricative
ف	F = a voiceless labio-dental fricative
ق	Q = a voiceless uvular stop
ك	K = a voiceless velar stop
ل	L = a voiced alveolar lateral
م	M = a voiced bilabial nasal
ن	N = a voiced alveolar nasal
هـ	H = a voiceless glottal fricative

و	W = a voiced labio-velar semi-vowel
ي	Y = a voiced palatal semi-vowel

The Vowels

u	a short close back rounded vowel
ū	a long close back rounded vowel
a	a short open vowel
ā	a long open vowel
i	a short close front unrounded vowel
ī	a long close front unrounded vowel

Glossary

Word	Meanings
<i>al-</i>	The
<i>al-Shariy'ah</i> (or Islamic law)	The <i>Qur'ān</i> and Islamic <i>Shariy'ah</i>
<i>Diyyah</i>	The value of human life, and minor criminal offences, as well as the punishments of death or amputation
<i>Hādīth</i>	All the sayings and the behaviour of the Prophet Muḥammad
<i>Ibn</i>	Son
<i>Ijmā'</i>	The consensus of the community
<i>Ijtihād</i>	Islamic legalisation (within Islamic law)
<i>Nizām</i>	Law or Act
<i>Qādī</i>	Judge (<i>Shariy'ah</i> or civil)
<i>Qiyās</i>	The method of analogy
<i>Qur'ān</i>	The Holy Book of Muslims revealed to Prophet Muḥammad
<i>Shaykh</i>	Head of tribes

<i>Shūra</i>	Consultation
<i>Sunnah</i>	What was transmitted on the authority of the prophet Muḥammad (BPUH), his deeds, sayings, tacit approval, or description of his physical appearance
<i>‘Ulamā’</i>	Religious Scholars

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Abbreviations

A.D.	(Of a date) of the Christian era
A.H.	In the year of the Hegira (622 A.D.); of the Muslim era
All ER	All England Law Report
CVCP	Committee of Vice-Chancellors and Principals of the University
DENI	The Department of Education, North Island
Ed.	edition
HEFCE	The Higher Education Funding Council for England
HEFCW	The Higher Education Funding Council for Wales
HESA	Higher Education Statistics Agency
HESES	Higher Education Students Early Statistics
HEUA	The Higher Education and Universities Act in Saudi Arabia
Ibid.	ibidem, in the same page

PBUH	God's prayers and peace be upon him
PCEF	Polytechnics and Colleges Employers' Forum
PCFC	Polytechnics and Colleges Founding Council
PEPC	Pay and Employment Policy Committee under CVCP
ROATS	The Regulation for Organising the Affairs of Teaching Staff at Saudi Universities
SHEFC	The Scotland Higher Education Funding Council
UCEA	The Universities and Colleges Employers' Association
FHEA	Further and Higher Education Act 1992
ERA	Education Reform Act 1988
EmpRA	Employment Rights Act 1996

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Abstract

Law that regulates management of higher education institutions has been increasing in recent years in both Saudi Arabia and England. The Higher Education and Universities Act (HEUA) 1414 A.H. (1993 A.D.) and the Regulation for Organising the Affairs of Teaching Staff (ROATS) 1418 A.H. (1997 A.D.) in Saudi Arabia arose as major upheavals in the organisation of Higher Education and Universities. Similar developments have occurred in England in response to the Education Reform Act (1988) and the Further and Higher Education Act (1992). All these developments in both countries have deeply effected the legal position of the university as well as the affairs of the academic staff and other university members.

This research seeks to show the laws that now apply to universities in both countries and to provide for all academic and administrative members of the university. In addition, the scope of this thesis is to compare the laws of universities and to show the advantages and disadvantages of such laws in relation to both legal and administrative affairs at these universities. Particular emphasis is placed on the organisation of the academic staff and on how the disciplinary procedures in both countries focus on natural justice.

Introduction

The laws of higher education are generally believed to effect the university education by providing some guarantee and security for both the university and its employees. The importance of such law relates to the quality of higher education, the community workforce, and the overall economic and social structure of the community.

The Higher Education and Universities Act 1414 A.H. (1993 A.D.) and the Regulation for Organising the Affairs of Teaching Staff 1418 A.H. (1997 A.D.) in Saudi Arabia arose from major upheavals in the organisation of Higher Education and Universities. The same type of development has occurred in England as a result of the Education Reform Act (1988) and the Further and Higher Education Act (1992). This development in both countries has strongly impacted the legal of the universities as well as the affairs of academic staff and other members of the universities. Such laws came to identify the legal rights and duties of all parties relating to the education process inside universities, including those involved in dispute resolution, university governance, and disciplinary and grievance procedures.

This study seeks to analyse the main topics of university law in relation to the legal nature, the academic staff, and the disciplinary functions of the universities of Saudi Arabia and England. It focuses on the best methods for understanding university law as an incentive for improvement of educational processes, introducing a new era in the field of higher education. This analysis attempts to review the

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Saudi and British experiences in promoting university law in relation to university employees and judicial developments in this field.

Since the introduction of these new laws in Saudi Arabia, little research has focused on this topic, whereas, England has a few studies on this subject, including D. J. Farrington's marvellous *Law of Higher Education*. However, this study investigates university law at large and explains some of the main factors in creating and utilising such law. The laws of universities in both countries are examined, concentrating mainly on the disciplinary and grievance procedures for academic staff members and other interested parties. Procedures from Saudi Arabia and England are compared to determine the laws' advantages and disadvantages.

For the purpose of comparison and to broaden the scope of discussion, an analysis of the university law and the views of other writers, critics, and commentators on practices of these laws are mentioned briefly or expanded from time to time where it seems appropriate. In addition, the aim of this study is not only to identify the relevant existing laws, but to determine the advantages and disadvantages of such laws and to bring this information together upon a coherent framework for better understanding and comparison.

This thesis consists of two parts covering the various aspects of the topic researched. The first part of the thesis covers the law of universities in Saudi Arabia and is divided into five chapters.

Chapter 1 deals with the gradual development of the education system in Saudi Arabia between 1925, when King Abdulaziz started

the first educational institution by establishing the Directorate General of Education, and 1993, when King Fahad established the Higher Education and Universities Council. This chapter also discusses the higher education goals in Saudi Arabia in some detail.

Chapter 2 covers the university administration in Saudi Arabia, beginning with the limitation of university autonomy in general. This is followed by an explanation of university governance.

Chapter 3 deals with identifying the roles, responsibilities, appointments, advancements, salaries, holidays, and so forth, of teaching staff members at Saudi Arabia universities.

Chapter 4 concerns the most important aspect of this study, the disciplinary and grievance procedures for the teaching staff members at Saudi Arabia universities, beginning with a description of the duties of such members. Following this is a discussion of the Disciplinary Committee for such members and the investigation procedures that must be followed. This chapter also deals with the authorities and responsibilities of the University Director in Saudi Arabia in relation to disciplinary procedures and the punishments allowable for execution on teaching staff members.

Finally, Chapter 5 explains the system of funding for the universities in Saudi Arabia.

The second part of this thesis covers university law in England and is divided into eight chapters.

Chapter 6 defines the university in England, including its power

to award degrees. This definition is followed by the procedures through which institutions can obtain university titles and the body responsible for dealing with such matters. This chapter also explains the concept of university in England before 1992.

Chapter 7 is concerned with the classification of English universities dependent on the method of their foundation, which range from medieval Papal Bulls to incorporation of a governing body under the Further and Higher Education Act of 1992.

Chapter 8 asks whether the British university is a public body. This chapter begins with an overview of public law, constitutional law, and the government in England. This chapter also examines the legal basis for establishing a university in England. The final section of the chapter articulates the governmental control over universities and the types of control available according to the university law.

Chapter 9 is concerned with the Higher Education Council, which is the most important source of university funding in England as established by FHEA 1992. The chapter also examines the conditions placed upon such funding and its models.

Chapter 10 deals with the governance of the universities in England, including both pre- and post-1992 universities. This chapter explains the Court, Council, Senate, Academic Board, and Convocation, as well as the Chancellor, Pro-Chancellor, Treasurer, Vice-Chancellor, Registrar, Auditor, Board of Faculties, Deans, and the Heads of Departments, including their appointment and responsibilities. The final part of this chapter deals with the

governance of the post-1992 universities including the Board of Governors, Academic Board, Chancellor, Chairman of the Board of Governors, Head of Institution, Pro-Vice-Chancellor, and Secretary of the Board of Governors.

Chapter 11 is concerned with the academic staff of the university in England to discover who comprises the academic staff and the relationship between the staff and the university as to whether it is contractual or disciplinary or both.

Chapter 12 deals with disciplinary and grievance procedures in English universities. It begins by identifying the freedom of the academic staff in both religion and speech. This is followed by an explanation of the university commissioners responsible for securing that the statutes of any university are modified to include the disciplinary and grievance procedures as well as provision for dismissing academic staff members by reason of redundancy. This chapter also deals with dismissal by good cause and the procedure to do so, including the relation of the dismissal to employment under contract. Also included in this chapter is the procedure for removing an academic staff member on medical grounds, the procedure for removing a member of the Court and Council, and the retirement and resignation of both officers and academic staff of the university. The final part of this chapter deals with the rules of natural justice in relation to such procedures.

Chapter 13 is concerned with the University Visitor as an important issue relating to judicial jurisdiction over the universities in

England. It begins with the historical background of the Visitor in England and is followed by the appointment, dismissal, powers, duties, and relationship of such Visitor to the court.

The research of this study completed in the winter of 1999. I have sought to state the law, as it stands, as much as possible, on September 31, 1999. In addition, I have to emphasise that the translation of Saudi law is not official; it is my own translation.

Among the difficulties encountered by the researcher in Part 1 (the law regarding Saudi universities) was the scarcity of academic books, articles, and cases relating to the disciplinary procedures for Saudi academic staff members as well as the secrecy of such cases. The most useful document was the new regulation organising the affairs of academic staff in Saudi universities established in 1418 A.H. (1997 A.D.), during the research, where all the affairs of academic members staff have been gathered in one regulation. This matter was so difficult to research in the past because every university had its own rules regarding the affairs of its academic staff members.

Among the difficulties encountered by the researcher in Part 2 (the law regarding English universities) was understanding the background for distinguishing between the public and private law in England. The long history of English universities, when he was dealing with their classification, was one of the difficulties he encountered. In addition, there were many laws regarding the universities in England, with no single law dealing with the universities alone. The most useful aspects of this part of the research were the abundance of cases

regarding different aspects of the universities as well as the ease and speed of communicating with bodies regarding the universities in England.

The summaries and conclusion of this thesis are relevant to the main difference between the law of universities in Saudi Arabia and England, including the definition of the university, the governors of the university, the affairs of the academic staff, the disciplinary and grievance procedures, the relationship between the university and its members and the university and the state. Recommendations for further changes are made, and suggestions offered in regard to areas in which further research is necessary.

Part 1: University Law in Saudi Arabia

Chapter 1: Saudi Arabia Legal System

1.1 Introduction

The Kingdom of Saudi Arabia is a monarchy with a political system rooted in Islam's cherished traditions and rich culture (See Appendix 1). Its rules and regulations are governed by the Holy *Qur'ān* and the *Sunnah*, which call for peace, justice, equality, consultation, and respect for the rights of the individual. Since King Abdulaziz Bin Abdul Rahmān Al-Su'ūd established the modern Kingdom of Saudi Arabia on September 23, 1932, the *Shariy'ah* has been the prop and source of Saudi Arabia's legal system.

The *Shariy'ah* is referred to as the law of Islam. Although the *Qur'ān* is the primary source of all of this law, its secular legal matter is limited. For the most part, the *Qur'ān* deals with the laws of marriage and inheritance. Therefore, it was supplemented in the first centuries of Islam by three additional subsidiary sources of law to create the *Shariy'ah*:

- The practice of the Prophet (Sunnah)
- The consensus of the community (*Ijmā'*)
- The method of analogy (*Qiyās*)

In 1928, King Abdulaziz decreed the organisation of the court system and the procedures to be followed, making it compulsory for

the courts in civil transactions to depend on the Hanbali texts written by Imam Ahmad Ibn Hanbal (780 - 855 AD) and based on text from the Holy *Qur'ān*.

Since the traditional scope of law is governed by *Shariy'ah* (e.g., personal status such as marriage, divorce, property, legitimacy, etc.) as well as criminal law, the new aspects of law (e.g., tax, copyright, investments, patents, trademarks, and commercial law) are subject to the formal procedures for new regulations. These formal procedures are as follows: When the need for regulating (*Nizām*) in particular field the issue would be identified by a committee of legal experts in the Council of Ministers, who are in charge of preparing the code of appropriate draft regulations¹. Then the draft regulation must be submitted to the Council of Ministers for consideration². Upon approval, the Council submits the draft regulation to the king. With the king's approval, a royal decree containing the regulation is issued³ and published in the Official Gazette (*Um-alQurā*)⁴.

Saudi Arabia's legal system development can be traced to legal improvements made in 1936 and 1952 by Royal Decree for the Civil Procedures Rules, in 1955 with the establishment of the Board of Grievances, and in 1958 with King Fayṣal's establishment of a Judicial Council entrusted with settling the differences between present social and economic requirements and Islamic traditions⁵. The growth of the government's role in the economy and of contact with other parts of the world has created a need for the Ministry of Justice (established in

1970) to enable the judicial system to better deal with the country's developing needs.

On the domestic scene, King Fahad introduced extensive reforms aimed at facilitating the continued development of Saudi Arabia in all spheres. In a 1992 effort to enhance the administrative efficiency and further development of the nation, King Fahad announced new bylaws for the Basic System of Government, *Majlis Al-Shūra*⁶ (Consultative Council), and the Provincial Council system. The same year he introduced bylaws for the Council of Ministers. In 1993, King Fahad also decreed new bylaws for the Higher Education and University. These bylaws enable the nation's higher education system to better meet the country's growing need for educated and skilled citizens in larger numbers and newer fields.

It is important to explain the court system in Saudi Arabia to identify the court, which has jurisdiction over the disputes of the Saudi universities whether between external parties or its members of academic staff. Does the ordinary court has jurisdiction over the universities, if the universities are treated as a private bodies, or is there a special court with jurisdiction over the cases which involve the university, if the universities in Saudi Arabia is treated as a public body.

1.2 The Court System in Saudi Arabia

Shariy'ah is the common law of the land and is administered by the courts, which are headed by a chief judge (*Qāḍī*) responsible for

the “development of *Shariy’ah* affairs”. The Ministry of Justice organises the court system in Saudi Arabia. There is now a three-tiered judicial system providing for appeal above the ordinary *Shariy’ah* courts; these are the Court of First Instance, the Court of Appeal, and the Supreme Judicial Council.

The Committee for the Settlement of Commercial Disputes is the commercial court. Other specialised courts or committees include those dealing exclusively with labour and employment matters:

- Negotiable Instrument Committee - cases relating to cheques, bills of exchange, and promissory notes
- Board of Grievances - disputes with the government and its agencies, trademark infringement cases, and enforcement of foreign court judgements

1.2.1 Court of First Instance

The Court of First Instance has two categories. The first is the lower courts, which deal with minor claims. One judge presides. These courts have limited jurisdiction and can hear the following cases: contracts and quasi-contracts with a value of less than 8,000 Saudi *Riyal* (£1,300); personal injuries and tort where the damage does not exceed one tenth of the prescribed Islamic compensation of *Diyyah*, which is the value of human life; minor criminal offences; and punishments of death or amputation⁷. The second type is the general (public) court with universal jurisdiction over all civil and criminal cases. These courts have one or more judges. Most circumstances

require once judge; but cases involving death, stoning, and amputation require the decision of a three-judge panel⁸.

1.2.2 Court of Appeal

There are two appellate *Shariy'ah* courts, one located in Riyādh and the other in Mecca. The first has jurisdiction to hear appeals from general courts located in the Central and Eastern Provinces and the second from the courts of the Western Provinces. The court consists of the chief justice and an adequate number of judges. It includes a division for criminal law, a department for personal status, and departments for other suits. The Chairman of the Court of Appeal is selected on the basis of absolute seniority⁹.

Divisions are bound by their own prior *Ijtihād* (reasoning) and by that of other departments. Three-judge panels hear appeals. However, in most cases, a panel of five judges must enforce sentences of death, amputation, and stoning. Decisions of the appellate courts are final, except in the cases of death, stoning, and amputation¹⁰.

1.2.3 Supreme Council of Justice

This is the highest authority in the *Shariy'ah* judicial system. It was set up in 1963 as the highest body of appeal or a "Supreme Court". In addition to its administrative functions, the Council has a consultative and judicial role. The Council's main duties are

- To review matter requested by the authority when considered necessary for the Council to express an

opinion;

- To review, at the request of the Minister of Justice, matters which require determination of general *Shariy'ah* principles and to give opinion on matters pertaining to the judiciary; and
- To review judgements imposing the death sentences, stoning, and amputation.

The Council is composed of eleven members and supervises the work of the courts. Two committees carry out the functions. Normally, direct appeals to the king in the form of petitions are permitted to solve grievances. This system is still practised and is a very useful method of obtaining a fair hearing. It will eventually play a vital part in the constitution¹¹ and may declare any law incompatible with the *Shariy'ah*, except the 1992 Basic Law of Government that may be altered only on the recommendation of the Council itself.

In the Saudi legal system, under traditional Islamic law, there are no jury trials. A single judge, who takes the role of investigative magistrate, can examine and cross-examine the disputants and their witnesses. Upon the trial's completion, the judge announces his decision and the damages due, if any ¹².

1.2.4 Specialised Courts

Article 26 of the judicial system (1975) stipulates that setting up specialised courts is permissible by royal decree on a proposal from the Supreme Council of Justice. According to Article 49 of the 1992

Basic Law of Government, the *Shariy'ah* courts shall arbitrate in all disputes and crimes; but exception is made at the prerogative of the Board of Grievances. Article 53 of the Basic Law of Government states that the Board is to be reviewed for the purpose of establishing the seniority of the Board of Grievances and its hereditary right¹³.

1.2.4.1 The Board of Grievances

The Board of Grievances was established in 1955¹⁴. In 1982, the Board's performance was examined for revision to reflect the growing competence that was created by the expansion of the government's role in the economy and the increase in the number of disputes with it. Consequently, the king gave the Board of Grievances greater judicial powers to increase its competence in settling more and certain disputes¹⁵. This board, according to Article 1 of its regulation, is an independent, administrative, judicial organisation directly responsible to the king. It is headquartered in Riyādh, but branches may be established by a decision of the Chairman of the Board as needed.

The Board of Grievances makes decisions concerning the following¹⁶:

- Cases relating to the rights determined by Civil Service and Pension regulations for the staff of the government and independent artificial entities or their heirs or successors.
- Cases submitted by appropriate persons in objection to administrative decisions if relating to lack of jurisdiction,

text errors, violation of regulations and rules, misapplication or interpretation of such a decision, or misuse of authority. The administrative authority's refusing or declining to take a decision that should have been taken pursuant to the regulations is considered an administrative decision.

- Compensation claims submitted to the government by persons or independent corporations due to their deeds.
- Disputes relating to contracts to which the government or any artificial entity is a party.

However, the board is not allowed to entertain “petitions pertaining to acts of state or appeals from individuals against decisions or rulings of the courts or judicial bodies in matters within their jurisdiction, nor to examine the constitutionality of administrative acts and regulations”¹⁷.

Thus, in Saudi Arabia, not only does the law applicable to state liability differ from the law applicable to the private sector, but also, when a question of state liability is raised, the case must be heard by the Board of Grievances instead of the ordinary courts of law. In this case, except for acts concerned with the sovereignty of the state and judicial decisions, whether articulated by the courts or the Board of Grievances, the Board hears all disputes to which the administration is a part¹⁸.

1.3 The Legal Profession in Saudi Arabia

The legal profession in Saudi Arabia is not fully established. Furthermore, in keeping with traditional Islamic law, lawyers in Saudi Arabia may not have a control of legal representation. Those parties to a dispute may represent themselves or nominate another, either a relative or a professional pleader, to act on their behalf. This practice was first introduced in 1936 by the Courts Civil Procedure Regulation, which allowed non-qualified persons to represent their own relatives only. More restrictions were introduced in 1952 that indicated an amateur should not represent more than three persons at any one time.

Professional lawyers in Saudi Arabia are classified into two groups:

1. The lawyers of the *Shariy'ah* courts, who must obtain a practising certificate from the Ministry of Justice, as well as being qualified in Islamic law. In reality, the relevant license to practice before the *Shariy'ah* courts is issued in each district. Only Saudi citizens who have traditional legal training are issued practising certificates¹⁹.
2. The practitioners of commercial law without the right of audience before the *Shariy'ah* courts. They do not have the right of audience before the *Shariy'ah* courts but can conduct appeals in front of the Board of Grievances and practice as commercial lawyers. Therefore, the Ministry of Commerce, who also regulates practitioners of commercial

law and intellectual property lawyers, issues the practising certificate. However, some government departments employ graduates of foreign law schools who may have no practical training in Islamic *Shariy'ah* law. Saudi lawyers, if licensed by the Ministry of Justice, can appear in any court in the country. Foreign lawyers cannot appear in *Shariy'ah* courts, but they may practice as legal consultants²⁰.

1.3.1 Notary Public

There is no such department within the legal profession as a private notary public. In the Kingdom of Saudi Arabia the notary public is a civil servant attached to the judiciary and the Ministry of Justice administers the notary public office (Article 46 of the Judicial System 1975).

1.4 Conclusion

In light of this discussion of the legal system in the Kingdom of Saudi Arabia, I have arrived at some conclusions. The *Qur'ān* is primary source of the legal system in Saudi Arabia, but subsidiary sources also help to make up the *Shariy'ah*, including *Sunnah*, *Ijmā'* and *Qiyās*. These sources govern the personal statutes such marriage, divorce, property, legitimacy, and criminal law which are subject to *Shariy'ah* courts. The law is supplemented by governmental regulations issued by the Council of Ministers under the royal prerogative that do not conflict with the *Shariy'ah*; these regulations govern matters such as tax, copyright, investments, patents,

trademarks, education law, administrative law, and commercial law. Such matters are subject to specialised courts or committees such as the Negotiable Instrument Committee and the Board of Grievances. In this respect, the Saudi legal system has adopted a binary judicial system as in France.

Notes – Chapter 1

¹ Amin, S. H. (ed), *Middle East Legal Systems* (1985), pp. 305-327.

² Article 20 & 21 of the Basic Law of Government in Saudi Arabia, 1992

³ Ibid.

⁴ Ibid. Article 23.

⁵ Ibid.

⁶ Established by Royal Decree No. A/91 dated 27-8-1412 A.H. (March 1, 1992 A.D.).

⁷ Rashed Abn-Namay, "The Recent Constitutional Reforms in Saudi Arabia",
International and Comparative Law Quarterly, vol. 42, April 1993, pp. 296-97.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Decree No.2/13/8759 dated 17/9/1374 A.H. (August 5, 1955 A.D.)

¹⁵ Decree No. M/51 dated 17/7/1402 A.H. (October 5, 1982 A.D.)

¹⁶ Article 8 of the Board of Grievances Regulation, 1982.

¹⁷ Ibid. Article 9.

¹⁸ For more details, see Note 7, pp. 321-323.

¹⁹ Ibid. Note 1.

²⁰ Ibid.

Chapter 2: The Development of the Educational System in Saudi Arabia

2.1 Introduction

The development of the educational system in Saudi Arabia led to important changes in university law. This chapter chronicles the development of the educational system in Saudi Arabia since 1925. In order to explain such development, this chapter attempts to show the educational concerns and goals of the government in Saudi Arabia.

The major concern of Saudi Government is to provide human resources within a constructive educational environment. Educational opportunities are widely available for all males and females, and citizens in Saudi Arabia do not pay any tax or any fees for education. However, education falls almost completely under the control of the central government. Not only education, but also transportation, health services, meals and monthly allowances are completely subsidised and funded by the Government of Saudi Arabia. Students are encouraged to follow the highest educational level that their physical and mental capabilities allow. Social mobility is highly encouraged by the government in accordance with the education policy.

The purpose of education, in Saudi Arabia, is to teach the

students to understand Islam in a correct comprehensive manner; to plan and diffuse the Islamic belief; to provide the students with the values, teachings, and ideals of Islam; to equip them with various skills and knowledge; to develop their conduct in constructive directions; to develop the society economically, socially, and culturally; and to prepare individuals to become useful members of society who love their homeland and are proud of its history¹. Islam contributes to the achievement of the educational objectives of Saudi Arabia through the principles and doctrines available in the Holy *Qur'ān* and *Al- Ḥādīth* of the prophet Muḥammad (PBUH). Both make up the Islamic *Shariy'ah*, which includes prescriptions for the political, economic, and social life of the Muslims in the community, family, individual, and the nation.

2.2 The Establishment of the Directorate General of Education

King Abdulaziz Ibn Su'ūd—who over a period of 30 years united the Kingdom's various regions by a mixed process of wars of conquest and voluntary absorption²—started the first educational institution by establishing the Directorate General of Education just after completing his duty in 1344 A.H. (1925 A.D.) by giving Al-Ḥijāz to the Kingdom. This newly established governmental organisation was to prepare the people to carry out the responsibilities of the development of the Kingdom for the new era.

The new Directorate General of Education spread education through the country by establishing modern schools. Teachers were

recruited from groups of educated citizens and from Arab countries, especially Egypt. Modern public education in Saudi Arabia began in 1373 A.H. (1953 A.D.) and continues today. On 18/4/1373 A.H. (1953 A.D), Royal Decree No. 21 established the Ministry of Education (the first Ministry of Education in the Arabian Peninsula). This decree dramatically impacted the diffusion of knowledge and provision of equal opportunities for education to all Saudi male and female students. This remarkable conceptual change generated new developments in administration, curriculum, and teacher education as well as established vocational, occupational, and technical schools and regulations.

Before becoming king, King Fahad Ibn Abdulaziz Al-Su'ūd was appointed the first Minister of Public Education for Boys in Saudi Arabia. In 1378 A.H. (1958 A.D.), Saudi Arabia and other members of the Arab League agreed upon a uniform educational system³. As a result, the program was changed to include six years of elementary school beginning at age six, three years of intermediate school, and three years of secondary school.

The following authorities administer education in the Kingdom:

- The Ministry of Public Education for Boys was the first government-developed form of authority established in 1373 A.H. (1953 A.D.).
- The General Administration of Public Education for Girls is an independent educational authority. It is headed by a male religious figure responsible to the king and controls

girls' education from kindergarten to age eighteen.

- The Ministry of Higher Education was established in 1396 A.H. (1976 A.D.) after the development of higher education and expansion of the already established universities (For more details of the history and classification of Saudi Universities see p.27). *Shaykh* Hasan Al-Shaykh, former Minister of Education, was appointed the first Ministry of Higher Education minister. This Ministry has undertaken the co-ordination, co-operation, and general direction among the existing universities and for study abroad.

During the last few years, the government has established a number of regulations for the development and improvement of higher education. The most important of these regulations are the regulation of Higher Education and Universities⁴ and the regulation regarding Saudi university faculty and staff members⁵.

2.3 Higher Education Goals

Since the Kingdom was established and unified in 1344 A.H. (1926 A.D.), higher education has been regarded as the method for providing the country with the highly educated manpower required to work for the development of the Saudi society and economy. The educational policy determined by the Supreme Council of Education in 1390 A.H. (1970 A.D.) stated in Article 108 that: "higher education is the proper to develop the talents of the students and thus fulfil the various present and future needs of the society in compliance with the

objectives of the nation and its noble goals”.

This educational policy includes in Articles 109-115 the specific goals of higher education in Saudi Arabia:

1. Providing the student with an Islamic education to emphasise his faith in God as only one God and Muḥammad as the messenger of God, to make him feel responsible for his Islamic nation, and to put his practical and scientific capacities into fruitful and useful action.
2. Preparing competent and highly intellectually and scientifically qualified citizens to perform their duties in the service of their country and their nation's progress according to the principles and ideology of Islam.
3. Providing gifted students with the opportunity to continue higher education in all fields of academic specialisation.
4. Participating in scientific research in the arts and sciences and finding solutions to technological problems.
5. Promoting writing and scientific production in order to bring the sciences into the service of the Islamic thought so the country can perform its leadership role in building human civilisation on Islam's genuine principles.
6. Translating science and the useful arts of knowledge to the language of *Qur'ān* and thus enriching the Arabic language with new expressions.
7. Offering training services and reorientation courses to enable graduates who are already working to keep pace with new

developments.

The goals and objectives of higher education in Saudi Arabia are

1. Higher education in Saudi Arabia starts right after secondary schooling or its equivalent. This is different from the position in the U.K. which has an intermediate period after compulsory secondary education which ends at 16.
2. Public and private higher education in Saudi Arabia is under the jurisdiction of the Higher Education and Universities Council.
3. Colleges and universities in the Kingdom are established in accordance with the country's needs and resources.
4. Universities shall have a council whose system, authorities, responsibilities, and procedures are set up.
5. Higher education is co-ordinated among various colleges so as to achieve equilibrium in satisfying the needs of the country in various fields. Again this is different from the position in the U.K. where universities have developed on a more individualistic basis making co-ordination more problematic.
6. Universities in the Kingdom shall co-operate with other universities in Islamic countries to achieve the objectives of the Islamic nation in building a genuine Islamic civilisation.
7. Universities in the Kingdom shall co-operate with universities in the world in scientific research and discovery and shall exchange useful research with these universities.

8. Libraries and Translation Departments shall be given special responsibility to develop knowledge for students and researchers.

Although the above goals and objectives have been set for the whole higher education system in Saudi Arabia, each higher education institution is assigned additional specific objectives and goals.

2.4 The Definition of Saudi Universities

The definition of Saudi universities is proved by Article 1 of HEUA 1993, which states,

All universities are scientific and cultural institutions following the Islamic code; execute educational policies; offer and provide university education and high studies; raise the scientific research, and perform publication and interpretation, and service the society in their specialised scope.

Thus, the universities in Saudi Arabia must work according to *Shariy'ah* law in all their affairs and must provide university education. In this sense, it is not acceptable in Saudi Arabia to call an institution a university if it does not provide a university education. However, the article and regulation do not define *university education*. It seems to me that *university education* in Saudi Arabia means only the education after the higher school provided by a body which is called by the government a *university* (because in Saudi Arabia several educational colleges that are not universities provide education after

higher school and give recognized degrees [first degrees]).

The definition also shows that the universities in Saudi Arabia have to execute the educational policies of the Saudi government (See Chapter 3), which means the government has great control over the universities. *Is there any kind of autonomy for the universities in Saudi Arabia?* This question is answered in detail in Chapter 4.

The definition also shows that the universities offer and provide high studies, raise the scientific research, and perform publication and interpretation, and service the society in their specialised scope. *What does their specialised scope mean?* According to HEUA 1993, no single article identifies such specialisation. However, the brief description of classification of the universities in Saudi Arabia may clarify such fog in their purpose and design.

2.4.1 The Classification of Saudi Universities

Universities in Saudi Arabia could be classified into three different groups according to their purposes and types:

- Comprehensive universities⁶ provide various types of scientific artistic, humanistic, and professional programmes of study. These are King Su'ūd University, King Abdulaziz University, King Fayṣal University, Um-alQurā University and King Khālid University.
- Islamic universities provide various types on Islamic and Arabic language studies. Religious studies cover *Shariy'ah*, *Ḥādīth*, religious principles, jurisprudence, and

studies from *Qur'ān*. Two of the Saudi universities specialise in religious studies: Imam Muḥammad Bin Su'ūd Islamic University in Riyādh, and the Islamic University in Madīnah.

- University of technology King Fahad University of Petroleum and Minerals is the only university in the Kingdom provides technology studies. Its curriculum emphasises technical and scientific studies.

At present, there are eight universities in Saudi Arabia administered by the Ministry of Higher Education. The following description designed to give a brief history of their establishment.

King Su'ūd University

King Su'ūd University (KSU), formerly Riyādh University, was the first university in the Kingdom. It was founded in 1377 A.H. (1957 A.D.) and represents Saudi Arabia's first commitment to the development of higher education. It is located in the capital, Riyādh, in the central region of the Kingdom and it is the largest university in the Kingdom , having 16 colleges in 1997-98 with a total enrolment of more than 41,036 (King Su'ūd University handbook, 1997).

The Islamic University

The Islamic University at Madīnah, founded in 1380 A.H. (1961 A.D.), the Islamic University in Medina is analogous to the Al-Azhar University of Cairo⁷. It serves as a regional centre for Islamic studies and attracts many foreign students. Currently, the University consists

of five colleges, which are all Islamic oriented. Students at the Islamic University can study for degrees in such fields as linguistics, *Shariy'ah*, Qurānic Studies, and Islamic Literature.

Imam Muḥammad Bin Su'ūd Islamic University

Imam Muḥammad Bin Su'ūd Islamic University was founded in 1394 A.H. (1974 A.D.) in Riyādh. The university is made up of an institute and several faculties. The High Judicial Institute was originally established in 1965 for the purpose of graduating qualified *Shariy'ah* judges. The Faculty of *Shariy'ah* was established earlier in 1953 for the purpose of meeting the demand for qualified '*Ulamā*' and preachers throughout the country. It confers a Licentiate degree (equivalent of a Bachelor of Arts degree) after four years of study. The Faculty of Arabic Language and Social Science was originally established as the Faculty of Social Sciences in 1970 and was expanded in 1974 by adding the Arabic Language major and a program in Library Science. The period of study is four years after which the student receives the equivalent of a Bachelor of Arts degree.

King Fahad University of Petroleum and Minerals

Located in Zahrān near the oil producing areas of the Kingdom. This University started in 1383 A.H. (1963 A.D.) as the College of Petroleum and minerals, and in its earliest days had links with the oil company ARAMCO. The College was given university status and renamed the University of Petroleum and Minerals (UPM) in 1975, and it was renamed King Fahad University of Petroleum and Minerals

(KFUPM) in 1986. Since that time, the University has been responsible to the Ministry of Higher Education. The University uses the American system in all matters, including, planning, organisation, and curriculum⁸.

King Abdulaziz University

King Abdulaziz University (KAU) in Jeddah in Western Province of the country was founded in 1386 A.H. (1967 A.D.) as a private university⁹ by a group of Saudi merchants who realised the importance of education in national development. In 1971, the founders petitioned the government to assume responsibility for its operation and it came under the jurisdiction of the Ministry of Higher Education. The academic programs at King Abdulaziz University are similar to those at King Su'ūd University. It offers undergraduate degrees in the fields of arts and humanities, administration and management natural sciences, engineering, architecture, planning, medicine and medical sciences, and education. In addition, it has a Faculty of Navigational Sciences reflecting Jeddah's historic link with the sea. The recently established Faculty of Meteorology and Environmental Sciences has also gained renown for its work in monitoring environmental pollution in the Jeddah area¹⁰.

King Fayṣal University

King Fayṣal University (KFU) was established in 1395 A.H. (1975 A.D) in Dammām in the Eastern Province. It has two campuses, the first campuses in Hāfūf in Al-Iḥsā' and is constituted of the Faculties of

Agriculture, and Veterinary Medicine and Animal resources. The second campus is located in Dammām and is comprised of the Faculties of Education, medicine and Medical Sciences.

Um-alQurā University

Um-alQurā University (UQU) is the most recent addition to the universities in Saudi Arabia. It is located in the holy city of Makkah and is composed of some of the Kingdom's oldest institutions of higher education. The roots of Um-al-Qurā University date back to the *Shariy'ah* College, founded in 1368 A. H. (1949 A.D.), and the Teachers' College established in 1952. These two colleges were combined in 1960-61 to become the College of *Shariy'ah* and Education. In 1971, this college became affiliated with KAU in Jeddah and in 1981 a royal decree established the college as an independent university, giving it the name Um-alQurā University. Although the main focus of the University is on religious studies it offers undergraduate degrees in Islamic Studies Arts and Humanities, Natural Sciences, Education, Engineering, Architecture, and Medicine and Medical sciences¹¹.

HEUA 1993 applies to all existing and future Saudi universities¹², such as, King Khālid University which is located in Abhā in Southern Province of the country. It established in the 1997-98 academic year where all branches of Saudi universities combined together.

2.5 King Abdulaziz University Goals

Since all Saudi universities relate to the law in the same way, I have chosen to examine one with which I am particularly familiar, King Abdulaziz University, to show how the goals of higher education relates to specific Saudi universities. Article 1 of the King Abdulaziz University Statute¹³ states, the aims of the university are:

1. Provides university education and Higher studies in different fields of arts, science and specialised filed of knowledge;
2. Special diligence for Islamic studies and its researches;
3. Preparing and qualified teachers;
4. Progressing science and knowledge through scientific researches and theirs procedures and encourage them;
5. Raising the activities of culture, sport, social and scientific knowledge¹⁴

Thus, the mission of King Abdulaziz University, as with the missions of all Saudi universities, clearly flows from the Islamic creed as the basic principle. The university cultivates Islamic concepts, ideas, and values in the student's personality so that they grow physically, spiritually, thoughtfully, and socially. The university is in charge of creating Islamic leadership and undertaking scientific research. In addition, the university is responsible for developing the nation's manpower and diffusing knowledge through lectures, symposiums, and conferences. Unlike some of the other universities the mission of King Abdulaziz University is to cover all fields of study.

Universities have to work in service of the Islamic culture and values through studying, explaining, and showing its role in the development of human civilisation. It could be concluded that the university mission is to provide both university and higher education in different fields.

Notes – Chapter 2

¹ Article 13, Basic Law of Government, 1992.

² Rashed Ibn- Namay, "The Recent Constitutional Reforms in Saudi Arabia", *International and Comparative Law Quarterly*, vol. 42, April 1993, p. 296.

³ See N. C. Walpole, *Area Handbook for Saudi Arabia*, 1971, p. 93.

⁴ See Royal Decree No. M/8 dated 4/6/1414 A.H. (Corresponding to 17/11/1993 A.D.)

⁵ See *Al-Riyādh Newspaper*, No. 10775, dated 24/08/1418 A.H. (24/12/1997 A.D.)

⁶ This name suggested by the researcher.

⁷ Fouad Al-Farsy, *Saudi Arabia: A Case Study in Development*, KPI in 1986, P.178

⁸ Al-Marzoky, Hatim, *The Shadow and Substance: Architectural Education and Its Relation to Practice with Special Reference to Saudi Arabia*, Ph.D., thesis, Newcastle University, 1999, p.250.

⁹ Fouad A-Farsy, op., cit., p.179.

¹⁰ Ibid.

¹¹ Ibid.

¹² Article 4 of HEUA 1993.

¹³ See Royal Decree No. M/5 dated 22/1/1392 A.H (Corresponding to 7/3/1972)

¹⁴ Article 1 of the Statutes of King Abdulaziz University, 1972.

Chapter 3: University Administration in Saudi Arabia

3.1 Introduction

Saudi university law specifically identifies three methods of administration for universities in Saudi Arabia. Examining the laws regarding these methods helps to explain whether Saudi universities are autonomous. The first administrative method is complete control by the government; the second method is no control by the government; and finally, universities can be under the control of the government with some autonomy. Universities that are completely controlled by the government would be governmental bodies subject to public law. However, completely autonomous universities would be subject to private law. Universities that have both autonomy and government control might be subject to private law in some respects. At present there are no private universities in Saudi Arabia, but there are proposals to develop some.

3.2 The Limitation of University Autonomy in Saudi Arabia

For this section, autonomy of Saudi universities means the universities' independence from the central government in their internal administration. *Does the central government have the authority to open or close departments or to force the university to teach or research specific fields?* The following sections should help answer

this question.

It has been said that the universities have autonomy from the central government because they enjoy a legal personality that gives them the rights of ownership and disposal and litigation as ordinary people according to Article 2 of Higher Education and Universities Act in Saudi Arabia (HEUA) 1993. This view can be rejected since the above article restricts this autonomy so to non-academic matters. For example, universities can buy cars, equipment, buildings, and so forth and can sell these properties. The question then becomes to what extent the Ministry of Higher Education can administrate or control universities' internal affairs.

Although all Saudi universities are completely controlled by the government with respect to policy, they enjoy operational independence in matters of finance and administration, but under the supervision of the Minister of Higher Education, who is the President of each University Council. He is required to supervise the execution of the Saudi educational policy in university education and the application of these regulations and systems in existing universities and universities yet to be established¹.

Unlike the position in the U.K. where the organisation and regulation of university staff is governed by a mixture of internal rules, contracts and practices which are subject to general legal regulation. Saudi Arabia universities are subject to a detailed code of rules prescribed by the central government, mainly in the form of the Higher Education and Universities Act 1993. Therefore, many aspects of the

relationship between academic staff and the university, notably promotions and sabbatical leave are governed by published general rules, leaving much less internal discretion than is the case in U.K. universities.

Under Articles 18 and 19 of HEUA, the authority of the Minister of Higher Education has broadened from supervision of the university under the old regulations² to a role detailed in university administration. (This will be discussed in detail below.)

3.3 The University Administration

There is a clear hierarchical structure, the University Council, Director, and Deputies run the university administration. A Faculty Council, Dean, and Assistant Dean administer each faculty. A Department Council and Chairman administer each department. However, all Saudi universities, according to Article 3 of the HEUA 1993, participate in a Higher Education Council. Therefore, the University Council, Director, and Deputies work under the Higher Education Council (See Chart 1: King Abdulaziz University Administrative Structure). However, Article 3 of HEUA 1993 does not identify the right position for the Higher Education Council. In my opinion Article 3 should read as follows: All universities and other institutions of higher education have to form a Higher Education Council which shall be located in Riyādh, and each university has to form its own University Council.

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3.3.1 The Higher Education Council

3.3.1.1 The Responsibility of the Higher Education Council

The Higher Education Council supervises and co-ordinates all higher education institutions in Saudi Arabia (except those related to military education)³. In particular, it is responsible for⁴

1. Directing university education according to the education policy of the government.
2. Supervising all sectors of university education development.
3. Achieving co-ordination between universities, especially concerning scientific departments and university grades.
4. Giving consent to establish new Faculties, Institutions, and Research Centres and Helping Deans in established universities, plus merging or cancelling parts of Faculties, Institutions, Centres, and Deans.
5. Recognising the special rules for establishing museums and associations in the scientific field and issuing periodicals.
6. Issuing common regulations and rules for universities.
7. Issuing rules for employers of “Saudi national and non Saudi contractors”, including teaching staff members, that consist of salaries, honorariums, and allowances after being agreed with the Ministry of Higher Education, Ministry of Finance and National Economy, and General Office of Civil Service.
8. Issuing rules regarding teaching staff members’ appointment promotion, loan, deployment, transfers inside or outside the university, and return to the academic positions for “Saudi

nationals” with the agreement of the Ministry of Higher Education and General Office of Civil Service.

9. Issuing rules for financial affairs of universities and implementing rules regulating honorariums and sponsorships of students with the agreement of the Ministry of Higher Education and Ministry of Finance and National Economy.
10. Recognising the rules that encourage qualified Saudi nationals who work outside universities to join the university teaching staff or to conduct research in scientific centres and determining their honorariums.
11. Suggesting amendments for the Higher Education and Universities Council system.
12. Discussing the annual reports of each university and submitting them to the Prime Minister⁵.
13. Recognising the rules for establishment new programmes and specialisation and the rules regarding the self-academic appraisal and external academic founding for studies programs.
14. Recognising the regulations aiming to establish national and popular institutions above secondary schools and supervising licensing them.
15. Studying and executing whatever has been submitted to the Higher Education Council by its President. The Council has a right to form permanent or temporary committees to study

issues that have been assigned to them. (In the case of these committees, it seems to me that the Article should be changed to include the following: The President of the Higher Education Council has the right to attend committee meetings. When he does, he will preside over those committees.)

3.3.1.2 Meetings and Voting

Article 16 of HEUA 1993 states that:

The Council shall hold three meetings per year according to invitation issued by its President, his deposes, or mandates; the Council President has a right to hold an exceptional meeting if necessary and his mandates have the same right; the Council meeting is invalid unless two-thirds of its members attend; the decisions and votes are by absolute majority, and the President has a casting vote when there is a tie.

In my opinion, the above Article, which controls meetings of the Higher Education Council, should answer the following questions:

- *What should happen when one or more members are absent from a Council meeting? Could the deputies of the members attend the meetings of the Higher Education Council in the members' places? Articles 14 and 16 of HEUA 1993 clearly state that the members should attend the meetings and do not mention the members' deputies.*

- *Is it possible for any member to insert any matter in the agenda of the Higher Education Council?*
- *Are the decisions of the Higher Education Council final and compulsory for other councils?*
- *What is the situation if any University Council made an objection to a decision of the Higher Education Council?* The regulation does not make it clear how far council decisions are binding. However, it is probable that rules made by the Council are binding on universities and the Ministry.

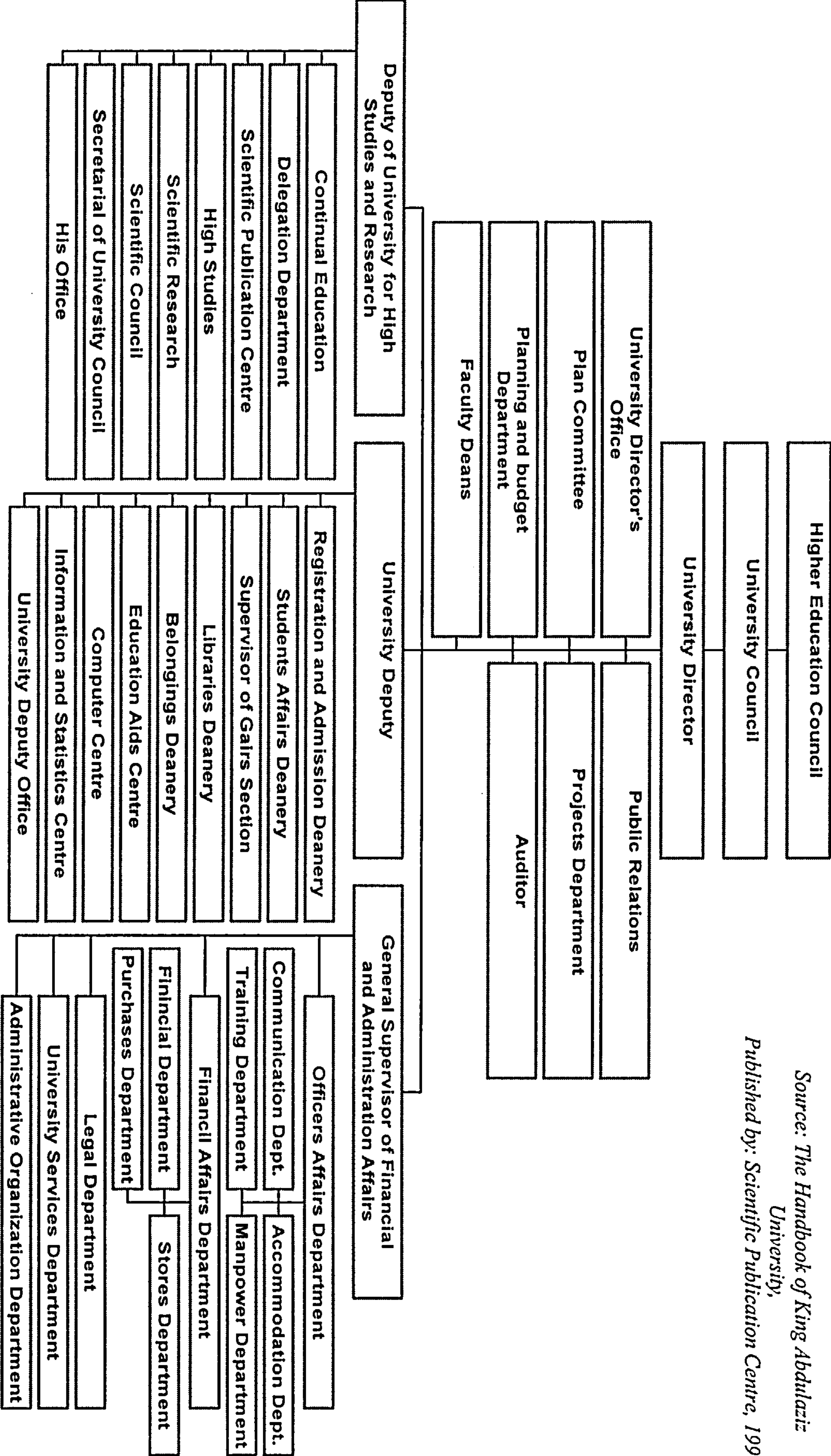
3.3.1.3 Composition

According to Article 14 of HEUA 1993, the Higher Education Council is composed of these officers and members

- the Prime Minister of State, who is head of the Higher Committee of Educational Policy – president
- the Minister of Higher Education – vice-president
- the Minister of Education – member
- the Minister of Finance and National Economy – member
- the Minister of Work and Social Affairs – member
- the Minister of Planning – member
- the Head of General Office for Civil Services – member
- the President of Girls Education – member
- the University Directors – members

Chart no. 1
King Abdulaziz University Administrative
Structure

Source: The Handbook of King Abdulaziz
University,
Published by: Scientific Publication Centre, 1990



3.3.1.4 The General Secretary of the Higher Education Council

According to Article 17 of HEUA 1993, the President of the Higher Education Council must appoint a General Secretary, according to the Ministry of Higher Education's recommendation, to be Secretary of the Council and configure its agenda. *Does this mean he is a member of the Council and has the same power as any member, such as voting?* This is not clear from the regulation. Article 14 of HEUA 1993, which deals with the constitution of the Higher Education Council, does not mention the General Secretary of the Higher Education Council as a member. Moreover, Article 17 of HEUA 1993, which deals with the position of the General Secretary of the Higher Education Council, identifies his responsibility as just configuring the agenda of the Higher Education Council. Thus, in my opinion, he is not a member of the Council.

Other questions also need answers. *What is the General Secretary's position? By law, he can be anyone; but in practice, can he be one of the university staff, the 'people with expertise,' or the executive staff? What are his salary and duties?* The truth is that I could not find answers for these questions through my research, but the situation should be one of two options:

- If the General Secretary position was created under the Ministry of Higher Education in the general budget of the state, then it would fall under the civil service regulations.
- If the General Secretary was appointed while working for a government agency and the position does not fall under

the general budget, then he would keep his last position. For example, if he was a member of the academic staff, then he would return to this academic position after completing his term as General Secretary.

3.3.1.5 The Higher Education Committee for Educational Policy

Is this committee still valid or has HEUA 1993 abolished it?

This Committee was established in 1385 A.H. (1966 A.D.) as the highest body responsible for drawing the educational policy of the Kingdom of Saudi Arabia not only for higher education but also for public education, including kindergarten, elementary, intermediate, and secondary schools. The Higher Education Committee for Educational Policy consists of:

1. The King of Saudi Arabia (president)
2. The Minister of Education (member)
3. The Minister of Higher Education (member)
4. The Public President of Girls Education (member)
5. The Public President of Technological and Vocational Education (member)
6. Other expert members from educational areas and academic staff of universities, their numbers determined by the king.

The document established by this Committee in 1390 A.H. (1970 A.D.) is the public education policy for the Kingdom of Saudi Arabia and is still valid today⁶.

The 1993 Act does not mention abolishing this committee; however, the Higher Education Council is not responsible for planning

educational policy, just directing university education according to that policy⁷. Another body must be responsible for planning educational policy, namely the Higher Committee of Educational Policy.

3.3.2 The University Council

3.3.2.1 Composition

According to Article 19 of HEUA 1993, the University Council consists of

- the Minister of Higher Education - president.
- the University Director – vice-president
- the University Deputies - members
- the General Secretary of the Higher Education Council⁸ - member
- the Deans - members
- three ‘persons of expertise’ appointed by the Minister of Higher Education for three-year terms – members

Certain questions are left unanswered here as well. In the case of the three ‘persons of expertise’,

- *What does ‘expertise’ mean?*
- *Can they have more than one membership of the Saudi Universities Councils?*

In my opinion, the experience, which the Article mentions, refers to experience in university or higher education or public affairs. The Article should be changed to read (Three ‘persons of expertise’ in

university or higher education or public affairs appointed by the Minister of Higher Education for three years applicable for renewable. Their votes should count as three, and they should be banded to one membership of the University Council under this regulation).

In the case of the Minister of Higher Education's absence, *is the Council meeting cancelled or should it continue with a Deputy of the President (Director) present?* I think Article 19 of HEUA 1993 should state, in the case of the Minister of Higher Education's absence, the meeting shall continue with the Director of the University presiding.

3.3.2.2 Responsibilities of the University Council

The University Council, as stipulated in Article 20, is restricted by HEUA 1993 and other regulations and decisions of the Higher Education Council, which means that all decisions of the Higher Education Council are binding on the University Council. The University Council is charged with the scientific affairs, administration, finance, and execution of the general policy of the university. In particular, it is responsible for

- Recognition of the planning of training and systems of delegation.
- Initial establishment of new Faculties, Institutions, Departments, and Research Centres and Helping Deans suggest ways of amending names or joining together or abolishing the above.
- Recognition of scientific specialisation and the programs of graduate studies.

- Offering and dealing on scientific grades for university students.

What degrees are they providing? I found only one article addressing this issue. King Abdulaziz University Regulation Article 13, under the section on study systems, stated, “the King Abdulaziz University Council grants the bachelor degree in science or in art or in science and education or in art and education according to recommending of the Dean of the Office of Registration”. Article 2 of the postgraduate study system in the King Abdulaziz University Regulations states, “the University Council grants according to recommendation of the Faculty Council and after observing all the regulations of the Dean of the Office of Registration the following degrees are granted the diploma degree, the master degree, the doctorate degree and offering honorary doctorate.”

- Determining the details of the academic calendar according to the general arrangement for beginning of studies and end of terms and determining the holidays within terms.
- Seconding members of teaching staff to other public bodies and deploying them for scientific purpose and offering them holidays, and engagement and termination of their services according to regulation rules.
- Recognition of the courses, study planning, course books and references according to the suggestion of Faculties and Institutions Councils.
- Initiating the expenses and honorariums for students of various

types.

- Consenting the budget scheme and submitting it to the Minister of Higher Education.
- Initiation of internal regulations and rules for the university. This must not include financial facilities or jobs.
- Suggesting special rules for the university or amending them.
- Discussion of the annual report for displaying to the Higher Education Council.
- Determining the amounts considered for each Faculty, Institute, and Helping Dean and the Research Centre to spend for their needs and according to the financial regulation.
- Discussion of a final account of the university as a preliminary step toward submission to the Prime Minister.
- Recognition of the unlisted activity planning for university.
- Appointment of teaching staff members according to recommendation of the Scientific Council which is similar to Senate but with less power. (This Council will be discussed in details on page 53)
- Acceptance of donations, presents and direction unless such transaction clash with the basic purpose of university establishment.
- Providing regulations and rules organising the activities of visiting and transfer students.
- Adjudication of matters transferred to it by the Minister of Higher Education or University Director or any matter suggested by

any member of council. The Council has a right to form permanent committees or temporary committees from its members or others to study whatever it may suggest.

I think above point is not good enough and should be changed to be as follows: (The Council ... and the President of the Council or his Deputy has a right to invite these committees at any time. In such cases he shall be the President of the committees).

Questions remain about the responsibility of council:

- *Does the Council have the right to suspend studies at the university or in any faculty or institution or department?*
- *Does the Council have the right to identify the number of students that the university should accept and organise for each year?*
- *Does the Council have the right to discuss the legality of the director's behaviour?*
- *Does the Council have the right to abolish director's decisions, Faculty Council decisions, or Institution Council decisions if the decisions are unlawful?*

3.3.2.3 Meetings and Voting

The Council meets at least once a month by invitation of the Council President, who has the right to call a meeting whenever he deems necessary. The President must also call a meeting when any member of the council introduces a written request for a meeting from one-third of the council members. The Minister of Education has the right to insert any matter into the agenda or to defer the meeting

before the time and date specified for the meeting. Meetings are invalid unless attended by two-thirds of the members. One of the members can be the General Secretary of the Council according to a recommendation by the Council and its President⁹.

All the decisions of council are issued by absolute vote of attending members; and the President has a casting vote in the event of a tie¹⁰.

3.3.3 The University Director

3.3.3.1 Appointment and Conditions

The University Director is one part of university administration¹¹. Article 23 of HEUA 1993 states that:

The University Director is appointed and excused from the position by royal decision at the suggestion of the Ministry of Higher Education. His appointment is at the rank of special class, meaning he falls under the regulations for special class employers.

In my opinion, this article should also state that he has the same authority as the minister for his employees.

Since his appointment places him under the regulation of special class employers, his term is for four years and he must complete his service in that time unless a royal decision extends his appointment¹².

Article 23 of HEUA 1993 does not contain any conditions for

appointing the University Director. In my opinion, such conditions should be established; for example, candidates for University Director should have five years experience as a Professor in a Saudi university that falls under HEUA 1993 jurisdiction.

3.3.3.2 Responsibilities of the University Director

The University Director is responsible to the Ministry of Higher Education according to Article 24 of HEUA 1993. He is in charge of scientific affairs, administration, and finance¹³. He has to supervise the application of HEUA, the decisions of the Higher Education Council, and the decisions of the University Council¹⁴. He represents the university before other agencies and has the right to delegate his authorities or a part of them¹⁵.

The University Director reports to the Ministry of Higher Education about the affairs of the university and the activities of every academic year by the end of the fourth month of the first term of the next academic year, according to the elements initiated by the Higher Education Council. This report is considered by the University Council, and the Ministry of Higher Education submits the report to the Higher Education Council to discuss it in the first session of the Council meeting before submission to the Prime Minister of Saudi Arabia¹⁶.

3.3.4 University Deputies

In Saudi universities there is usually more than one Deputy, and each has his own office and authority. Under supervision of the

University Director, each is usually in charge of specific parts of the university. The Deputies support and help the Director to administer and run university affairs¹⁷. This is similar to the modern practice of appointing Pro-Vice-Chancellors in U.K. universities with executive responsibilities.

There are several points that must be mentioned regarding University Deputies from Article 26 of HEUA 1993.

- The Higher Education Council determines their number within teaching staff members, and a Deputy has the rank of Participating Professor. Although this article identifies this condition for appointing University Deputies, it is my opinion that it should specify that candidates have at least four years of experience as a Participating Professor in a Saudi university under HEUA 1993.
- The Deputy is appointed and excused from other duties at the Higher Education Council's decision according to the mandate of the University Director. The appointment is for three years and may be renewed twice.
- The Deputy is granted the first grade of fifteen (15th rank) and entitlements designed for such position. If his salary is, according to the cadre of teaching staff members, more than the salary of first class, then he obtains his salary and equitable additional allowances and upgrade of rank if it passes the last grade of fifteen.
- In case of leaving office, the University Deputy obtains his

salary according to his academic grade; and if his grade is below the grade of salary obtained during the time he was in office, he then obtains the differences through allowances and upgrades.

- The rules and regulations for allowances and upgrading designed of teaching staff members apply to the University Deputy.

3.3.5 The Scientific Council

3.3.5.1 The Responsibilities of the Scientific Council

In every university in Saudi Arabia there is a Scientific Council to supervise the scientific affairs for teaching staff, affairs of research, studies and publications especially for following¹⁸:

1. Recommendation for appointment of teaching staff in university.
2. To look for upgrading of scientific grade for teaching staff members in university according to the regulations formulated through Higher Education Council.
3. To encouragement scientific researches and translation and publication, and shall satisfied the following:
 - (a) To determining and putting the regulations for preparing scientific research encouragement.
 - (b) To initiate an establishment of Scientific Research Centres.
 - (c) To co-ordination between Scientific Research Centres

and publish a general planning for them.

- (d) To organising the links with scientific research outside the university.
 - (e) To determining the incorrigible and reasonable honorariums for researches and judge them and order the pay out of them.
 - (f) To disclose research and titles and scientific thesis's which it sight for publications.
 - (g) To recommended issuing scientific periodicals.
 - (h) To recommended the institute scientific associations and museums and arrangement between them.
 - (i) To impose and decide the link of books study and university thesis's which needs revised.
4. To evaluating the scientific degrees which introduced by Saudi national in teaching staff member.
5. To study what is delivered by University Council.

3.3.5.2 The Composition of the Scientific Council

The Scientific Council in all Saudi universities according to Article 29 Of HEUA 1993 consists of:

1. Deputy of University for High Studies and Research-Chairman.
2. One member from teaching staff to represent each Faculty or Institute with grade of Participating Professor, and their appointment by a decision of University Council according to selection of Faculty Council or Institute and consent of

University Director.

Its applicable joining other members to the Council of Scientific by decision of University Council whom they consent with researches and scientific matters, and these members should not exceeds half number of total members¹⁹. The appointment of the members of the Scientific Council is for two years applicable for once renewable²⁰. The Scientific Council has a right to form permanent or temporary committees consisting the members of Scientific Council to look after whatever it discovered by council for study²¹.

3.3.5.3 The Meeting of the Scientific Council

The Scientific Council holds meeting according to the order of invitation by its Chairman once every month²². However, the Chairman has a right to call for exceptional meeting if there is any exception or if two third of member ordered for meetings in written²³. Moreover, the University Director has a right to insert any matter in agenda of meeting for discussions and also he has to preside the meeting if he attending the meeting²⁴. However, any meeting of Scientific Council will not be valid until two third of member attending²⁵.

3.3.5.4 The Voting of the Scientific Council

The decisions of Scientific Council creditable for issue by absolute majority of presents, and in case of equalising of vote the Chairman has a casting vote²⁶. Such decisions will be valid if there is no objection by University Director within 15 days from date of receiving all decisions; if there is any objection he must return each all

decisions to the Council with point of view to restudy again; if the Council views are same must transfer the decision or matter to the University Council for looking and taking right and suitable decision which are final²⁷.

3.3.6 Faculty or Institution Council (Article 33 HEUA 1993)

The faculty or institution is governed by the Faculty or Institute Council or by the Faculty or Institute Dean. The Faculty Council is composed of

- The Dean (chairman)
- The Deputy
- The Department Heads

(I believe the Faculty Council should include one Professor from each department according to the recommendation of the Head of Department and the support of the Faculty Dean. He should be appointed by decision of the University Director for two years applicable for one renewal.)

The University Council can at the suggestion of the Faculty or Institute Council with the support of the University Director add to the Faculty or Institute Council three members from the teaching staff or analogous faculty of the university and determine the duration of their membership²⁸. In my opinion, it should be for a maximum of two years because the Deans, the Department Heads, and the Faculty Deputies are appointed for two years.

Two questions remain regarding the position of Deputy after

reading Article 33 of HEUA 1993. Even though this article mentions “the Deputy”, *does this mean that each faculty or institution can have only one Deputy?* Although one Deputy is mentioned in Article 33, Article 38 deals with the Deputies of Faculty or Deans of Institutions. (This issue is discussed in detail the section on Faculty Deputies.)

In terms of selected members, what are the necessary qualifications and who selects these members? These answers can be found by looking at the laws before HEUA 1993. In nominating selected members to Faculty Council, the following conditions or qualifications had to be considered²⁹:

- The nominated candidate’s scientific ranks must not be less than that of a Participating Professor.
- Candidates must have substantial experience, although this is not defined, and have made an effective contribution to department and faculty activities.
- The following requirements could also be applied because HEUA 1993 mentions no standard. I believe these requirements should be used by universities until a new regulation is established by the Higher Education Council that includes the following measurements:
 - Must have a good record of administrative work.
 - Must have good behaviour both inside and outside the faculty.
 - Must have at least two articles in his field published or accepted for publication.

3.3.6.1 Responsibilities of the Faculty or Institution Council

The Faculty Council looks after matters concerning the faculty or institute and has such functions:

1. To initiate the appointment and loan of teaching staff members, Lecturers, and Tutors and mandate and upgrade them.
2. To suggest study plans and amend them with departmental co-ordination.
3. To initiate syllabus courses, textbooks, and references in Faculty or Institute Departments.
4. To encourage the preparation of scientific research and disclose and co-ordinate such research between Faculty or Institute Departments.
5. To initiate the date and day for return of examinations and organise the rules and regulations for such procedures.
6. To suggest internal regulation of the faculty or institute.
7. To initiate training courses and delegation.
8. To initiate the plan of unlisted activities for faculty.
9. To determine the student matters included in their specifications. (The matters that are not in their specifications must be submitted to the University Council.)
10. To judge in the transferral of matters by University Council or its President or his Deputy for studying and give opinion.

These authorities and responsibilities are restricted by the HEUA 1993, other systems, other regulations, and decisions of the

Higher Education Council and University Council³⁰.

3.3.6.2 Meetings and Voting

As in the case of the University Council, the Faculty or Institute Council meets at the invitation of its Chairman at least once each month. The meeting is invalid unless two-thirds of its members attend. Decisions are made according to the vote of the absolute majority of those who are present, and the vote of the Chairman has a casting vote if there is a tie.

All decisions are submitted to the University Director within fifteen days; and if any objection is raised, the matter returns to the Council for restudy with the director's recommendation. If the Council concurs with its original decision, the matter is submitted to the University Council in first session or an exceptional session; and the University Council can accept, abolish, or amend the decision. The University Council decision is final. If the director agrees with the Faculty or Institute Council's original decision, the decision is executed, and the University Council is not involved.

The Faculty Council or Institute has a right to form permanent or temporary committees within its members³¹.

3.3.7 Deans

3.3.7.1 Appointment and Dismissal

Article 36 of HEUA 1993 states,

The appointment of Faculty or Institute Dean shall be one of a Saudi national member of teaching

staff who are highly qualified in academic affairs and with a substantial experience of administration, the appointment shall be decided by the Minister of Higher Education according to the mandate of the University Director and the appointment duration shall be for two years applicable for renewal.

This also applies to the Deans of Helping Departments such as the Dean of Library Affairs and the Dean of Student Affairs; Article 39 states,

The appointment of Helping Department Deans shall be Saudi national members of teaching staff who are highly qualified in scientific field and with a substantial experience of administration, by appointment decision issued by the Minister of Higher Education after receiving the mandates of the University Director and the duration of appointment shall not exceed two years and its applicable for renewal.

Several important points are omitted from Article 36 of HEUA 1993. This article does not identify how many times the Dean's appointment can be renewable. *Can this appointment be renewed indefinitely?* I would recommend that it be renewed a maximum of twice. This article also neglects to identify the academic staff position that gives him an opportunity to be Dean. Thus, every member of the

Saudi teaching staff has an opportunity to be Dean. In addition, the article does not identify which faculty or institution the Dean must be from. *Could the Dean be appointed from another institute?* An amendment like the following would clarify this point:

The appointment of the Faculty or Institute Dean shall be from among the Saudi national members of the teaching staff working at that faculty or institution who are highly qualified in academic affairs and with a substantial experience of administration. The Minister of Higher Education shall determine the appointment according to the mandate of the University Director; and the appointment duration shall be for two years applicable for renewal twice at the most.

Is it possible to dismiss the Dean before he finishes his period?

HEUA 1993 does not directly address this question; but because the Dean is a member of the Saudi teaching staff and falls under the regulations regarding their discipline (See Chapter 5), the Dean can be dismissed for abusing his duties and responsibilities after an investigation. Amending Article 36 to read as follows would clarify this issue:

It is allowable to dismiss the Dean before his term of appointment is complete according to good cause at the decision of the Minister of Higher Education and support of the University Council if

the Dean abuses his duties and responsibilities as determined by an investigation regulated by the rules regarding the discipline of teaching staff members at Saudi universities.

3.3.7.2 Responsibilities of the Dean

The Faculty Dean is in charge of controlling the administrative affairs and scientific and financial matters of the faculty, limited by HEUA 1993. The Faculty Dean also has to provide a report at the end of the academic year to the University Director concerning the educational affairs and other activities of the faculty or institute³². Not all of the Dean's responsibilities are clear; more details could be provided regarding responsibility in appointments, upgrades, discipline, and scientific, administrative, and financial matters.

The Higher Education Council should answer the following questions:

- *What is the situation if the Dean refuses to mandate the Faculty Deputy?*
- *Can the University Director appoint the Deputy without mandate from the Faculty Dean?*

3.3.8 The Deputies of the Faculty Dean

It is permissible but not binding to appoint in every Faculty or Institute one or more Deputies from among the Saudi teaching staff members qualified in their scientific field and administration. The University Director issues the appointment decisions mandated by the

Faculty Dean.

When there is more than one Deputy, the Senior Deputy supports the Dean in his duties and represents him in his absence or upon the vacancy of his position. One of the Deputies is in charge of the Faculty or Institute Council Secretary³³. This also applies to the Deputies of Ancillary Departments; Article 40 of HEUA 1993 states that:

It is allowable to appoint any members of teaching staff as Deputies of Ancillary Departments if they show qualification and a high sense of administration. The University Director upon mandate of the Deans shall make their appointment. The duration of appointment shall be two years applicable for renewal. The Faculty Deputy shall support the Dean and his other Deputies in case of vacancy of position or absence.

3.3.9 The Department Council of Faculties and Institutions

Each Faculty or Institute Department has its own Council consisting of teaching staff from that department. According to Article 1 of the ROATS 1997, the members of the teaching staff consist of the following grades or levels:

- Professors.
- Participating Professors.
- Assistants Professors.

Lecturers and Tutors are apparently not included in the Department Council. Therefore, several questions become evident:

- *Why is this the case when they teach the department's students?*
- *Is it possible for the Department Council to invite a Tutor or Lecturer to its meetings when matters concerning Lecturers and Tutors are to be discussed? If yes, does the Lecturer or Tutor present have a vote?*

In my opinion, Article 41 could be improved by including the following text: Every Faculty or Institute Department shall have its own Council consisting of teaching staff of the department, and two Tutors and two Lecturers at the most. The Dean appoints them after mandate of the Head of Department. The appointment shall be for one year applicable for renewal once, and their number must be less than number of teaching staff in the department. The department shall have authority for scientific affairs, finance, and administration within the limitation of this regulation and internal disciplines.

3.3.9.1 Responsibilities of the Department Council (HEUA Article 43)

The Department Council initiates for the Faculty Council the study of programs and the planning and syllabi of courses, textbooks, and references. Also, the Department Council suggests appointments of teaching staff members, Lecturers, and Tutors and their upgrading. At the same time, the Department Council manages research activity and distributes the timetable and other administrative duties. It is

also responsible for training teaching staff members, Lecturers, and Tutors and organising and co-ordinating the duties of the departments. Each department is responsible to teach the courses and syllabi specified by the University Council.

The Department Council can form permanent or temporary committees of its staff members. The article regarding committees would be stronger if it stated that the Head of the Department Council has a right to call a meeting of any committee at any time and shall preside over that committee upon calling the meeting.

3.3.9.2 Meetings and Voting

Meetings of Department Council are held at least once each month and are invalid unless two-thirds of the council members attend. In the case of a tie, the Chairman has a casting vote. The decisions of council are executed if there is no objection from the Faculty Deans within fifteen days of their submission. If there is any objection, the Dean resubmits the matter to council with recommendations for re-evaluation. If the Council maintains its stand, the matter is submitted to the Faculty Council, whose decision is final and accredited³⁴.

3.3.10 The Head of Department

3.3.10.1 Appointment and Responsibilities

According to HEUA 1993, the Department Head is appointed from the teaching staff members who have shown special qualification and administrative sense at the recommendation of the Faculty Dean

and approval by the University Director. The appointment is for two years applicable for renewal. The Department Head is responsible for leading and governing the department and must introduce a report about departmental affairs annually to the Dean of Faculty³⁵.

Several revisions to this description would make it clearer. First, it should specify if the candidate should be a Saudi national. Second, the renewability of the appointment should be limited to twice at the most. Third, the regulation does not mention the absence of the President of the Department Council nor that of the Deputy of the Head of the Department. In my opinion, the Department Council should appoint a Deputy of the Head of Department approved by the Dean of Faculty.

3.4 Funding for Saudi Universities

3.4.1 Introduction

All Saudi universities are corporate bodies and have the same rights as a private person. Thus, a university has the right to buy and sell property and is subject to liability, but it still a government body and completely subject to the state.

The budget of a Saudi university comes from the state's budget and is subject to the state as all public bodies in Saudi Arabia are. The method of approval for the university budget is very simple. It starts at the university itself with the approval of the University Council and is then sent to the Ministry of Finance and National Economy. There it is studied and discussed with the university

delegate, and then the Ministry of Finance and National Economy approves it to be sent with the other government budgets to the Council of Ministers. As part of the general budget of Saudi Arabia, it is discussed and approved with the consideration of the king. Finally, it is established as royal law.

The university cannot change its budget, but it can make adjustments within the budget itself, within the law, with permission from the Ministry of Finance and National Economy.

Thus every Saudi university has an autonomous budget granted by royal decision that determines revenue and expenditure and is controlled by the General Control Office. In addition, the financial year of the university is the financial year of the state³⁶.

However, the Higher Education Council organises the rules for financial audit for any kind of pay out that was not previously authorised by the state's budget with the agreement of the Ministry of Higher Education, the Ministry of Finance and National Economy, and the Office of General Control³⁷. The University Council appoints one Auditor and more than one accountant who meet the legal conditions necessary and must have a right as an accountant in a share quoted company. The General Audit Office controls their duties³⁸.

3.4.2 University Revenues

According to Article 53 of the HEUA 1993, university revenues in all Saudi universities consist of

- Credits from the state budget

- Donations, grants, etc.
- Revenue and income of university properties and what they may produce.
- Any revenue or income maintained from other projects of research and studies conducted by the university or other scientific and academic services.

The university has a right to conduct any studies or scientific services for any Saudi institution for an agreed upon amount of university revenue that is to be kept in a separate account to be expended for purposes determined and organised by the Higher Education Council. Also, the University Council has a right to accept any donations and presents especially for the university plus conditional donations if the conditions do not oppose the aims and objectives of university rule. These donations are also placed in a separate account and expended in designed purpose according to the rules initiated by the Higher Education Council³⁹.

3.5 Conclusion

From the previous discussion, one can arrive at the following conclusions:

1. The universities in Saudi Arabia are administrated by the Higher Education Council, the University Councils, the University Directors, the University Deputies, and the Faculty and Department Councils. Such organisation is specific and hierarchical, especially where the powers and

responsibilities are identified. I have however, identified certain gaps.

2. HEUA 1993 adopted appointment over election in the composition of such councils. In addition, the powers of the Secretary of the State have moved from supervision to direct involvement with university administration.
3. Every Saudi university has an separate budget conferred by royal decision; the General Control Office controls this budget. The major revenue of the universities comes from the government budget.
4. Although, the Saudi universities are completely controlled by the central government, they enjoy the autonomy to possess and to dispose of property and are subject to legal prosecution like ordinary people, except when they are acting under public law.

Notes – Chapter 3

¹ Article 13 of HEUA 1993.

² See Article 2 of the Statutes of King Abdulaziz University, 1972 A.D.

³ Article 15 of HEUA 1993.

⁴ Ibid.

⁵ *Why he is responsible for this while he is the President of the Council?* I think this point must be changed to read as follows: Discussing the annual reports for each university and submitting them to the Council of Ministers.

⁶ Alsalom, Hamad, *Public Education in the Kingdom of Saudi Arabia, Between Political and Theory*, p.25, 1996, International Graphics.

⁷ Article 15/1 of HEUA 1993.

⁸ For more details, see p. 43.

⁹ Article 21 of HEUA 1993.

¹⁰ Ibid. Article 22.

¹¹ Ibid. Article 18.

¹² See Royal Decision A/14 dated 03/03/1414 A.H. (20/8/1993 A.D.)

¹³ Article 24 of HEUA 1993.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Article 25 of HEUA 1993.

¹⁷ See Chart 1.

¹⁸ Article 28 of HEUA 1993.

¹⁹ Article 29 of HEUA 1993.

²⁰ Ibid.

²¹ Ibid.

²² Article 30 of HEUA 1993.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Article 31 of HEUA 1993.

²⁷ Ibid.

²⁸ Article 33 of HEUA 1993.

²⁹Article 3 of the Rules of Academic Organisation for Faculty of Economic and Management 1987.

³⁰Article 34 of HEUA 1993.

³¹Ibid. Article 35.

³²Ibid. Article 37.

³³Ibid. Article 38.

³⁴Ibid. Article 42.

³⁵Ibid. Article 44.

³⁶Ibid. Article 50.

³⁷ Ibid. Article 51.

³⁸ Ibid. Article 52.

³⁹ Ibid. Article 54.

Chapter 4: Teaching Staff Members at Saudi Arabia Universities

4.1 The Basic Members of the Teaching Staff

This section investigates the regulations that control the legal position of members of the teaching staff at Saudi universities. It also aims to answer a very important question: *Who are the members of the academic staff at Saudi universities?* The answer to this question is important because it determines who is governed by the Regulation for Organising the Affairs of Teaching Staff at Saudi Universities (ROATS) established on 24/12/1997.

Article 1 of ROATS 1997, states that: “members of the teaching staff shall consist of the following grades:

- Professors.
- Participating Professors.
- Assistant Professors”.

ROATS distinguishes between these grades and other members of the staff who work as teaching staff, for example, Lecturers and Tutors. I will therefore discuss these two areas: those who work as teaching staff and the basic members of the teaching staff, namely Professors, Participating Professors and Assistant Professors.

4.2 Staff Members Who Work as Teaching Staff

According to Article 2 of ROATS 1997, Lecturers, Language Tutors, and Research Assistants must be considered members of teaching staff. Thus, it is clear that all who work as part of the teaching staff at Saudi universities are considered “members of teaching staff”, and the new regulation should be applied to them.

4.2.1 Procedure for Appointment

The appointment of Lecturers, Tutors and Language Tutors is according to the recommendations of the Department Council, the Faculty Council and the Permanent Committee for the affairs of Lecturers, Tutors, Language Tutors, and Research Assistants. The University Council issues the resolution for appointment¹.

The appointment of Research Assistants follows the same procedure, but the University Director issues the resolution for appointment. This procedure follows Article 8 of ROATS 1997, which states, “The appointment of Research Assistants shall be according to the recommendations of the Department Council, the Faculty Council and the Permanent Committee for the affairs of Lecturers, Tutors, Language Tutors and Research Assistants”.

4.2.2 The Conditions of Appointment

4.2.2.1 Tutors

The conditions for the appointment of Tutors, according to Article 4 of ROATS 1997, are as follows:

- University degree from any Saudi or other reputable university.
- Obtain at least very good grade in his university degree.
- Any other conditions and requirements issued by the University Council.

It appears that this third condition is quite open and that full power to add more conditions has been given to the University Council, rather than the Department Council (which I think should have authority to add conditions of appointment for Tutors because the department knows exactly the kind of Tutors they need).

4.2.2.2 Lecturers and Language Tutors

The conditions for the appointment of Lecturers and Language Tutors, according to Article 5 of ROATS 1997, are as follows:

- Master's degree or its equivalent from any Saudi or other reputable university.
- High grade levels at university.
- Any other conditions and requirements issued by the University Council.

This third condition also excludes the Department Council. (See the above section on the conditions for the appointment of Tutors.)

4.2.2.3 Assistant Professors

Appointment of Assistant Professors requires those candidates² to have a Ph.D. or equivalent degree from any Saudi or other reputable university, with the same University Council right to add conditions that I have mentioned for other member of the teaching

staff. (See the above section on the conditions for the appointment of Tutors.) However, there is an exception in Article 12 of ROATS 1997 which states, in cases of necessity, and according to the recommendation of the Department, Faculty, and Scientific Councils, it is permissible for the University Council to appoint Assistant Professors who do not hold a Ph.D. or equivalent degree in some specialisation where a Ph.D. or equivalent is not a necessary qualification. In such cases, the appointment must be made according to the following regulations:

- The candidate must have a Master's degree or equivalent from any Saudi or other reputable university.
- The candidate must have at least three years experience as a Lecturer.
- The candidate must have published three items after the completion of their Master's degree. At least one of these shall have been produced individually.

The published items should conform to the rules set out in Article 29 of this regulation. (Article 29 will be discussed later.)

4.2.2.4 Participating Professors

In concordance with Article 12, the University Council considers appointment to the rank of Participating Professor under the following conditions³:

- The candidate shall hold a Ph.D. from a Saudi or other reputable university.
- The candidate shall have at least four years experience as

an Assistant Professor, with teaching responsibilities.

- The candidate must be scientifically advanced to the rank of Assistant Professor in a Saudi or other reputable university.

4.2.2.5 Professors

In concordance with Article 12, the University Council considers appointment to the rank of Professor under the following conditions⁴:

- The candidate must hold a Ph.D. from a Saudi or other reputable university.
- The candidate must have at least eight years experience as a Participating Professor, four of them as a Participating Professor in a Saudi or other reputable university.
- The candidate must be scientifically graded at the rank of Participating Professor in a Saudi or other reputable university.

According to Article 15 of ROATS 1997, the appointment of teaching staff is by recommendation of the Department, Faculty, and Scientific Councils. The University Council issues appointment resolutions.

4.3 Advancement of Teaching Staff Members

4.3.1 Criteria for Advancement

The advancement teaching staff members must be executed according to the following criteria⁵:

- Scientific production
- Teaching
- Serving the university and society

4.3.2 Procedures for Advancement

The general procedures for advancement, according to Article 26 of ROATS 1997, are as follows:

1. The member of teaching staff shall apply for advancement with the Form of Advancement to the specified Department Council as follows:
 - Statement of scientific qualifications and previous employment in grade of advancement sought
 - Statement of teaching activities
 - Statement of activities that serve the university and society
 - At least five examples of personal scientific production with explanations
 - Any other information or documents which may be required by the Department, Faculty, or Scientific Councils.
2. The Department Council shall investigate whether the Form of Advancement has satisfied the conditional procedures and will recommend the submission of the application to the Faculty Council with a recommendation for not less than eight names of specialised judges. This Council shall consist

of not less than eight members.

3. The Faculty Council shall investigate the application for advancement according to the recommendation of the Department Council. The Faculty Council must also nominate various judges, not less than eight, of those nominated by the Department Council or by others.
4. The Scientific Council shall investigate the application for advancement according to the recommendation of the Department and Faculty Councils. The Scientific Council shall
 - Select five judges to evaluate the research. These are selected from the eight names recommended by the Faculty Council or others. Three judges carry out the main review; two of them must be from outside the university. The fourth and fifth are reserve inspectors in case of emergencies.
 - Research the items and data regarding the advancement that were previously sent to the judges and select a method of evaluation according to the pattern designed by the Scientific Council.
 - Judge whether the candidate is suitable for advancement after reviewing the candidate's reports and statements of activity in the university and in society.
 - If the Council refuses consent for advancement because of lack of scientific production, they must determine the fate

of any research submitted and what they have accepted or refused to consider for the minimum grade of advancement again. In case of further application for advancement, the candidate should introduce at least one new research unit when applying for the grade of Participating Professor, and two new research units for the grade of Professor.

4.3.3 Conditions for Advancement

The conditions of advancement from the rank of Assistant Professor to that of Participating Professor and Participating Professor to Professor are as follows⁶:

1. The candidate shall have served for at least four years at the lower grade in a Saudi or other reputable university with at least one year's service at a Saudi university.
2. The candidate shall have satisfied the minimum requirement of scientific production for advancement according to Article 32 of this regulation.
3. The scientific production of the candidate must have been published or accepted for publication during the period of their tenure.

Members of teaching staff have a right to ask for advancement from their Department Councils through the Form of Advancement up to six months before the completion of the required duration of tenure according to Article 23 of ROATS 1997. The loan, delegation, and

secondment (See explanation of these terms later in this chapter.) according to Article 24 of ROATS 1997 are counted as follows for advancement purposes:

- The full duration of the loan, delegation, or secondment is counted if it is spent at a scientific place of work and the work done is within the field of specialisation.
- Half of the duration of the loan, delegation, or secondment is counted if it is spent at a non-scientific place of work and the work done is in the field of specialisation.
- The full duration is uncountable if his work was done outside the field of his specialisation.

There are a total of 100 points to an appraisal of an academic member; these divided as such: 60 points for the scientific production, 25 for teaching, 15 for serving the university and society. The University Council, upon recommendation from the Scientific Council, approves the criteria for teaching and serving the university and society.

Members of the teaching staff who apply for advancement will be required to obtain at least 60 points. At least 35 points for scientific production are required from candidates applying for the rank of Participating Professor. At least 40 points of scientific production are required from candidates applying for the rank of Professor.

Consent for advancement to the rank of Participating Professor is granted by the majority vote of three judges. Consent for advancement to the rank of Professor is granted by unanimous vote of

the judges. In cases where two judges vote for and one against advancement of a candidate for Professor, all scientific production must be sent to another judge whose opinion is final and executed⁷.

The minimum requirements for the advancement of members of teaching staff, according to Article 29 of ROATS 1997, are as follows:

1. Published research or research accepted for publication in scientific magazines or journals. The Scientific Council must set the measurements for acceptance of the journal judged.
2. Judged research introduced at congresses and scientific seminars if they are published or accepted for publication. This category must consist of one unit only.
3. Judged research published or accepted for publication by specialist university research centres.
4. Judged university textbooks. This category must consist of one unit only.
5. Judged unique books. (These must be investigated.) This category must consist of one unit only.
6. Judged translated scientific books. This category must consist of one unit only.
7. Books and other research. (These should be approved by the Scientific Council and must be applicable for judgement.) This category must consist of one unit only.
8. Inventions and contrivances issued with a patent from the Office of Patent Inventions and recognised by the Scientific Council.

9. Prestigious creative activities determined according to rules approved by the University Council and recommended by the Scientific Council. This category must consist of one unit only.

Additional conditions for the advancement of teaching staff members should be mentioned here.

1. Articles published or accepted for publication in scientific journals must not be less than the minimum requirement for advancement of members of the teaching staff and shall be one unit of advancement for those applying for the rank of Participating Professor, two units for those applying for the rank of Professor⁸.
2. The scientific production introduced for the purposes of advancement should be published or accepted for publication through more than one channel, and these channels must not be under the control of one university or one scientific institution⁹.
3. The minimum requirement of scientific production shall be four published units for those applying for the rank of Participating Professor, with at least two of these representing individual work. The University Council has the right to make exception from these conditions for certain specialisations. In such cases, the material published must not be less than one unit¹⁰.
4. The minimum requirement of scientific production shall be

six units published or accepted for publication for those who applying for the rank of Professors, with at least three of these representing individual work. The University Council has the right, according to the recommendation of the Scientific Council, to make exception from these conditions for certain specialisations. In such cases, the material published must be no less than three units¹¹.

5. The scientific production is counted as one unit if the work is produced under sole authorship. If two authors produce the work, it counts as half a unit. If the work is done by more than two authors, the main author is counted as half a unit and other authors are counted as a quarter of a unit¹².
6. The scientific articles forming the basis for advancement shall not include the applicant's Master's degree thesis or doctoral thesis. In cases where the University Council discovers that an article comes from one of these prohibited sources, it has the right to prevent the applicant from presenting another application for advancement until one year after the date of any decision issued by the Scientific Council¹³.
7. The judges for any advancement to Professor rank must be Professors. The judges for the Participating Professor rank could be Participating Professors¹⁴.
8. The scientific increase in rank shall be from the date of the decision issued by the Scientific Council. Professional

advancement shall date from the executive decision issued on a vacancy¹⁵.

4.4 Salaries

According to Article 18 of ROATS 1997, the candidates appointed to the teaching staff should be ranked in the first class of the grade they have been appointed to. If the salary at the time of appointment equals or exceeds this rank then the university must offer the first class of salary that exceeds this previous level and virtually advance the rank of the candidate commensurate to the salary in the grade to which he has been appointed. If the candidate is later advanced in salary and it is no longer commensurate to his rank, then the university must grant rank of the first class that exceeds the level of his salary. (See Table 1.) However, the teaching staff, including Tutors and Lecturers, is subject to the same compensation and honorariums as government employees on the following basis¹⁶.

- Tutor - position 8th class
- Lecturer - position 9th class
- Assistant Professor - position 12th class
- Participating Professor - position 13th class
- Professor - position 14th class

It is noteworthy that, in the case of a Professor who has reached the last class of salary for that rank, the periodical annual bonus is continuously provided; however, other ranks of the teaching staff do not share this benefit¹⁷.

In addition to the staff member's salary, there is a honorariums amount of 3000 Saudi *Riyals* per month offered to the University Deputy¹⁸; 1000 Saudi *Riyals* per month (with a maximum of 10,000 Saudi *Riyals* per year) offered to the Dean of the Faculty¹⁹; 800 Saudi *Riyals* per month (with a maximum of 8000 Saudi *Riyals* per year) offered to the Deputy Dean; and 500 Saudi *Riyals* per month (with a maximum of 5000 Saudi *Riyals* per year) offered to the Department Heads²⁰. Also, there is a requital amount of 10,000 Saudi *Riyals* per year to be offered to the Secretary of the Scientific Council if he is a member of the teaching staff. However, if he is not a member of the teaching staff, he is subject to determination and regulation by civil service regulations²¹.

Table 1
Salaries of university Teaching Staff Members, Lecturers, and Tutors.

As approved by Royal Ordinance No.38 issued 24/9/1401 A.H. (25/7/1981 A.D.) and including additional Fire scale by Royal Ordinance No. M/17 issued 23/11/1414 A.H. (3/5/1994 A.D.) valid from 1/1/1415 A.H.²²

Function		Tutor	Lecturer	Assistant Professor	Participating Professor	Professor
	1	5052	6625	9650	12155	13925
S	2	5335	7005	10080	12605	14475
C	3	5645	7385	10510	13155	15025
A	4	5955	7765	10940	13655	15575
L	5	6265	8145	11370	14155	16125
E	6	6575	8525	11800	14655	16675
S	7	6885	8905	12230	15155	17225
	8	7165	9285	12660	15655	17775
&	9	7505	9665	13090	16155	18325
	10	7895	10045	13520	16655	18875
R	11	8125	10425	13950	17155	19425
A	12	8435	10805	14380	17655	19975
N	13	8754	11185	14810	18155	20525
K	14	9055	11565	15240	18655	21075
S	15	9365	11945	15670	19155	21625
Annual Bonus		310	380	430	500	550

Note: Salaries are in Saudi *Riyals* per month.

Article 48 of ROATS 1997 stipulates that the university must determine the honorariums of teaching staff when preparing and teaching units for non-university courses as follows:

- Professor - 300 Saudi *Riyals*
- Participating Professor - 250 Saudi *Riyals*

- Assistant Professor - 200 Saudi *Riyals*
- Lecturer and Language Tutor - 150 Saudi *Riyals*
- Tutor - 100 Saudi *Riyals*

Article 49 of ROATS 1997 states, “The Deputies, Deans, Deputy Deans, Heads of Departments and Scientific Centres, and members of teaching staff whom they charge with work during the summer holidays shall be offered compensation equal to the duration of the task to an amount not exceeding two month’s salary”. It is noteworthy that the above quotation does not identify who the Deputies are; it seems that they must be the University Deputies.

4.5 Holidays

The summer holidays for teaching staff, Lecturers, Tutors, and Language Tutors are counted as annual holidays and the University Council determines the time to return back from holiday. The holidays must start after the termination of the examination period and the declaration of results²³. However, the Director of the University has the right to order members of the teaching staff, Lecturers, Tutors, and Language Tutors to take charge or hold office during the holidays and to be compensated with an amount equal to an additional month’s salary equal to his salary; this should not exceed more than sixty days annually²⁴.

Moreover, the Director of the University has the right, according to the requirements of the work, to consent to partially or fully postpone the holidays of teaching staff members²⁵. Other holidays,

however, can be offered to the academic teaching staff according to the disciplinary regulations of the civil service²⁶ (e.g., the *Ramadan* and *Al Hijjah* holidays). In addition, the University Director can offer members of teaching staff exceptional holidays for reasonable causes. These holidays must not exceed six months in three years and are unsalaried; but in the case of necessity, the University Council has the right to except these conditions as long as the duration is not for more than one year²⁷.

Apart from the holidays mentioned thus far, the University Council may decide according to the recommendations of the Department, Faculty and Scientific Councils that members of teaching staff may take sabbatical leave in order to do scientific work. This may happen for one academic year after five years of appointment or enjoyed with previous periods of sabbatical leave. Also, this may happen for the duration of one semester after three years of appointment or enjoyed with previous periods of sabbatical leave without affecting the continuation of the programme of education²⁸.

What are the conditions for a sabbatical leave?

According to Article 62 of ROATS 1997, conditions apply to providing a staff member with a sabbatical leave.

- It is not permissible to grant a sabbatical leave to more than one member of teaching staff at a time and a maximum of ten percent of teaching staff in each department per year.
- The member of the teaching staff must provide a scientific

programme with the intention of executing it during the sabbatical leave.

Article 64 of ROATS 1997 adds two more conditions:

- It is not allowable to grant any candidate lending or delegating if he is offering a sabbatical leave.
- It is not allowable for the candidate at the same time to hold a contract for work or consultation.

In addition, the candidate must be restricted to execution only of the scientific programme decided by the University Council and must provide the Department Council with a detailed report, accompanied by a copy of the scientific work that has been completed, to be reviewed by the department and then the Scientific Council. This report should be presented before the end of the second term from finishing the sabbatical leave ²⁹.

4.6 Scientific Consultation

It is allowable to transfer a member of the teaching staff to service as an unengaged consultant in the government or private sector or a regional or international organisation who is considering Saudi Arabia as a location, according to the following rules³⁰:

1. They must work as a consultant in their specialisation.
2. They must not work as a consultant in more than one place.
3. The maximum duration for a consultation is one year applicable for renewal.
4. The specified minister of the government sector or the

director of the system or institution for private sectors and regional or international organisations must provide the application to the Minister of Higher Education.

5. Consent to consultation and renewals shall rest with the Minister of Higher Education according to the recommendation of the Department and Faculty Councils and the support of the University Director.
6. The consultant should produce an annual report to the minister of higher education about his work during the period of his consultation and should supply the same report to the University Director.
7. The work of teaching staff members as consultants should not affect their work during engagement, especially in the following areas:
 - (a) The duties of teaching.
 - (b) Attending to laboratories during laboratory hours and outpatient clinics, laboratories, and computer centres if the nature of their work requires this.
 - (c) Contributions to councils and committees that serve the university and require the engagement of the candidate.

4.7 Lending and Delegating

It is allowable to delegate a teaching staff member or equivalent for work in government sectors. This must be done by resolution of

the University Council according to the recommendations of both the Department and Faculty Councils, and the university must take responsibility for the payment of the delegate's salary and monthly compensation for travel unless agreed otherwise³¹.

Furthermore, Article 70 of ROATS 1997 allows the university to lend the service of a teaching staff member or equivalent for institutions will be identified later in p.96. As with delegation, this must be done by resolution of the University Council according to the recommendation of both the Department and Faculty Councils; but it is permissible for the university to abolish the resolution of loan before the termination of its duration.

It is noteworthy that the University Council has the right to implement the resolution of loan consent to order the loaned candidate to contribute to the post in academic works such as teaching, scientific supervision, or training in the university without the university being responsible to pay for such work³².

Regarding lending and delegating, two questions should be answered. First, *what are the conditions for lending teaching staff member?* The conditions for the loan of teaching staff members and their equivalents are the following³³:

- The candidate should have spent three years in the university. (The University Council has the right of exception in cases of necessity.)
- The number of teaching staff members on loan must not exceed one, or ten percent of the total teaching staff in the

department, per annum.

- The teaching staff member who has been loaned shall work for the university for not less than that of the loan period on his return.
- The loan shall not have the consequence of disturbing the continuance of study during the loan period.
- The Council of the University may adopt any other conditions.

Moreover, any loan period should be for the following institutions³⁴:

- Universities and university colleges inside and outside of the Kingdom
- Ministries and other government institutions
- Public and private organisations
- Governments and regional and international organisations

In addition, the loan should be for a period of less than one year applicable for renewal. The loan duration must not last for five years continuously. The Council of the University has the right of exception from this period for a maximum duration of two years. However, this must not exceed a total loan duration of ten years during the period of work of a teaching staff member or equivalent in the university or any other university³⁵.

Second, *what is the difference between lending and delegating?*

Unlike with a delegated teaching staff member, the borrowing

institution shall pay the salary of the loaned candidate with compensation and honorariums from the date of the conduction of works and should treat this as a matter of seniority according to the seniority and allowances paid to the candidate as if he were working in the university³⁶. Retirement benefits must also be deducted. The evaluation and counting of the loan duration for the purposes of advancement as we have seen must be according to Article 24 of ROATS 1997.

4.8 Scientific Communication

According to Article 76 of ROATS 1997, the University Council can decide, at the recommendation of the Scientific, Department, and Faculty Councils, to send a teaching staff member on a mission outside the headquarters of the university for a duration not exceeding four months. In cases of necessity, this can be extended to one year. Candidates sent in this manner should be treated as loan candidates if the duration does not exceed one month and delegated candidates for training if this period is increased.

The University Council may decide, at the recommendation of both the Department and Faculty Councils, to send a teaching staff member to teach outside the Kingdom³⁷. The candidate in such cases must be treated as a delegated official working outside the Kingdom, and the duration of the delegation should not exceed four years³⁸.

The University Director can also decide, according to the recommendation of the Department, Faculty, and Scientific Councils,

to permit a teaching staff member to travel for research in other universities during the summer holidays according to the following conditions³⁹:

- The staff member must submit an application with supporting data.
- The candidate must submit a report after return to the specified Department Council showing the research undertaken. This report shall be submitted to the Scientific Council.
- The candidate shall be offered a ticket for air travel.

4.9 Transfers of Academic Staff Members

According to Article 79 of ROATS 1997, a teaching staff member or equivalent may be transferred in the field of his specialisation from one department to another within the faculty. The University Director makes this decision according to the recommendation of the Scientific and Faculty Councils and both Department councils the teaching staff member is transferring between. It is also allowable to transfer a teaching staff member or equivalent from one faculty to another within the same university. This must be done by decision of the University Director at the recommendation of the Scientific Council and both Department and Faculty Councils effected⁴⁰.

Moreover, the teaching staff member or equivalent may be transferred to employment outside the university at the University Director's decision. This must be done according to the

recommendation of both the Scientific and Department Councils and with the consent of the candidate⁴¹.

4.10 Retirement

Teaching staff members are referred for retirement at the decision of the University Director upon reaching sixty years of age according to the *hegira* of the Muslim era. The University Director may decide to extend the service of a teaching staff member who has reached sixty years of age during the academic year to the end of that academic year. The Higher Education Council has the right, at the recommendation of the University Director, to extend the service of a teaching staff member for another term or terms until the person reaches sixty-five years of age⁴².

4.11 Termination on Medical Ground

If it is proven that a teaching staff member or equivalent has failed to conduct his duties because of illness, the University Director shall submit a report on the case to the University Council to determine the situation and consider the termination of service⁴³.

4.12 Resignation

According to Article 94 of ROATS 1997, the Council of the University has the right, at the recommendation of the specific Department, Faculty, and Scientific Councils, to accept the resignation of a teaching staff member or equivalent and refer him for

a pension according to his demand or intention.

4.13 Conclusion

This chapter demonstrates the deep concern the Saudi government has shown for the higher education system in Saudi Arabia by showing the regulations developed to organise and protect the affairs of academic staff members. These regulations set forth the conditions for the appointment of academic staff members and the procedures that must be followed to achieve such. They have also established procedures for promotion of the academic staff and for regulating salaries, holidays, loans, delegation, transfers, retirement, and resignation, and so on. In return for granting such rights to academic staff members, Saudi society expects such members to perform certain duties and responsibilities. The following chapter will detail these responsibilities and the disciplinary procedures available for handling situations in which such responsibilities have been abused.

Notes – Chapter 4

¹ Article 7 of ROATS 1997.

² Ibid. Article 11.

³ Ibid. Article 13.

⁴ Ibid. Article 14.

⁵ Ibid. Article 25.

⁶ Ibid. Article 21.

⁷ Ibid. Article 28.

⁸ Ibid. Article 30.

⁹ Ibid. Article 31.

¹⁰ Ibid. Article 32.

¹¹ Ibid. Article 33.

¹² Ibid. Article 34.

¹³ Ibid. Article 35.

¹⁴ Ibid. Article 36.

¹⁵ Ibid. Article 37.

¹⁶ Ibid. Article 19.

¹⁷ Ibid. Article 20.

¹⁸ Ibid. Article 45.

¹⁹ Ibid. Article 46.

²⁰ Ibid. Article 46.

²¹ Ibid. Article 47.

²² *Al Riyādh Newspapers*, No.10775, 34th year, 24/12/1997 A.D.

²³ Article 56 of ROATS 1997.

²⁴ Ibid. Article 57.

²⁵ Ibid. Article 58.

²⁶ Ibid. Article 59.

²⁷ Ibid. Article 60.

²⁸ Ibid. Article 61.

²⁹ Ibid. Article 65.

³⁰ Ibid. Article 66.

³¹ Ibid. Article 69.

³² Ibid. Article 75.

³³ Ibid. Article 71.

³⁴ Ibid. Article 72.

³⁵ Ibid. Article 73.

³⁶ Ibid. Article 74.

³⁷ Ibid. Article 77.

³⁸ Ibid.

³⁹ Ibid. Article 78.

⁴⁰ Ibid. Article 80.

⁴¹ Ibid. Article 81.

⁴² Ibid. Article 93.

⁴³ Ibid. Article 94.

Chapter 5: Disciplinary Procedures for Teaching Staff Members in Saudi Arabia

5.1 Introduction

The teaching staff is the main power in university life and in public society. Concern for their rights is the basic element in the mind of university government. Consequently, these rights are met by further commitments (duties) which must be undertaken by teaching staff members to allow the university to accomplish its goals. Therefore, the university administration has the right to ask academic staff members to concern themselves with their duties; so, when members of the teaching staff do not perform their duties, the university has the right to hold them accountable for their actions and punish them according to the law.

5.2 The Duties of the Teaching Staff

5.2.1 In General

The duties of teaching staff, according to Article 38 of ROATS 1997, are to develop

- Trust, ethics, and moral framework created by instruction and regulations.
- Fellowship in new creations and issues. Contribution

through activities to the progress of their specialisation.

- Links for students to the latest research in their specialisation and encouragement to study and enjoy their knowledge and insight.
- Contributions to the effective work of their Department Council and other Councils at Department, Faculty, and university levels to serve the university and society in general.
- Work solely for the university. Outside work must not be taken without permission.

The teaching staff members are also responsible for regulating study halls and laboratories. Reports should be made on misbehaviour or abuse of such regulations¹.

5.2.2 In Teaching

The minimum teaching requirements for members of the teaching staff are as follows²:

- Professor - 10 teaching units
- Participating Professor - 12 teaching units
- Assistant Professor - 14 teaching units
- Lecturer - 16 teaching units (If the Lecturer is also studying for qualification, this number should be reduced.)
- Tutor - 16 teaching units (If the Tutor is also studying for qualification, this number should be reduced.)

- Language Tutor - 18 teaching units

If the number of units the teaching staff member is teaching surpasses the amount previously established, the Faculty Council has the right to offer a bonus for increased teaching units at 150 Saudi *Riyals* per unit³.

A teaching unit is equivalent to one weekly lecture of at least fifty minutes. Practical or field-study lessons must be at least 100 minutes. However, teaching staff members work thirty-five hours per week, which can be changed to forty hours per week if so decided by the University Council. Working hours must be spent engaged in teaching, research, academic guidance, bureau hours, attendance at scientific committee meetings, and other work charged to the teaching staff by the university administration⁴. Yet, according to Article 42 of ROATS 1997, administrators, such as, Deans, their Deputies, Directors of Scientific Centres, and Department Heads, may reduce the teaching unit requirement by up to three units.

5.3 The Disciplinary Committee for Teaching Staff Members and Their Equivalents at Saudi Universities

If any teaching staff member or equivalent is viewed as misbehaving or disregarding his duties and is thus under consideration for disciplinary action, one of the Deans must conduct an investigation of the matter by order of the University Director. Then, a report must be offered upon conclusion of the investigation. Upon finding good cause for disciplinary action, the University

Director refers the teaching staff member under investigation to the Disciplinary Committee. In this section, I will discuss the following matters: the form of the committee, the nature of the committee, and the procedure for trials before this committee.

5.3.1 The Definition of the Committee

The University Director forms the Committee for the disciplinary of teaching staff members and their equivalents according to the conditions set forth in Article 82 of ROATS 1997:

- The Chairman should be one of the Deputies of the University.
- One of the Deans not involved in the investigation should be a member.
- One Professor should be a member.
- One candidate or teaching staff member specialising in Islamic code or regulations should be a member.

Article 82 does not specify whether the Disciplinary Committee is permanent or varies by case. In my opinion, it is permanent except for the Dean of the Faculty, when the member of the academic staff who was referred for disciplinary action is from his faculty. However, the committee could vary by case as the Director of the University thinks fit.

5.3.2 The Nature of the Committee

The importance of identifying the nature of this committee is to

determine whether it is an administrative committee or a court. If it is a court it would fall under the sector for administrative justice and its decisions would be legal judgements. The committee's nature determines whether it is possible to appeal its decisions before the Board of Grievances⁵.

The clarity brief of the Board of Grievances regulation states that decisions issued in cases determined by a committee established by the law, cabinet decision, or royal decision and mentioned in these instruments are final. These decisions will remain final until the instruments are changed to place the committee's decisions within the jurisdiction of the Board of Grievance. Such change would allow the Board of Grievances to examine such committee's decisions. University Council decisions in disciplinary cases, according to Article 88 of ROATS, are final; therefore, they cannot be appealed to the Board of Grievances until Article 88 is changed to render the University Council's decisions subject to appeal in disciplinary matters.

5.4 The Proceeding of the Investigation of a Teaching Staff Member

According to Article 88 of ROATS 1997, the Disciplinary Committee should consider the referred case in the following manner:

1. The Chairman of the Committee appoints a selected employee to be Secretary of the Committee.
2. The University Director should inform teaching staff

members and their equivalents that they have been referred to the Disciplinary Committee by registered letter not less than fifteen days before the relevant session. The letter must include the accusations faced and a copy of the investigation report⁶. The Committee must hold its meeting according to the invitation of the Chairman.

3. Meetings should be held when the person under investigation or his deputy is present, and the adjudication of the matter and investigation procedures should be conducted in secret. The Committee also has the right to hear witnesses' testimonies if required.
4. Resolutions of the Committee are by a majority, and meetings are invalid unless attended by all Committee members. The Committee must present a report of its findings to the University Director, including the case file, not less than two months from the date of referral of the investigation to the Committee. In cases where the University Director does not confirm the resolutions of the Committee, the matter returns to the Committee. If the Committee again reaches the same resolution, the matter should be submitted to the University Council for final resolution.
5. The University Director immediately informs the person under investigation of the Committee's decision by registered letter.
6. The teaching staff member or equivalent may appeal the

decision by letter to the University Director within thirty days of being informed of the Committee's resolution; otherwise, the resolution will be considered final. If the appeal is lodged before the expiration of the determined period, the University Director returns the matter again to the Disciplinary Committee for re-examination. If the Committee reaches the same decision, the matter is transferred to the University Council whose decision is final.

The resolution of punishment, however, must not effect the other prosecutions which have arisen from the same matter⁷.

5.5 The Authority and Responsibilities of the University Director to Discipline Teaching Staff Members

According to the Article 84 of ROATS 1997, the University Director has the right to decide a resolution for the suspension from work of any teaching staff member or equivalent if this is in the interest of the investigation. The duration of the suspension must not exceed three months without a decision from the Disciplinary Committee. It is permissible to extend this duration according to the requirements of the investigation, but the suspension cannot exceed one year for each period of investigation.

In the case of suspension, the teaching staff member is offered half of his net salary. If he is punished without dismissal or discharge, the other half of his salary must be offered to him. If punished by dismissal, he loses the second half of his salary and it is not

permissible to refund what had been paid to him, unless the body which issued the punishment decides otherwise⁸.

The University Director has the right to give teaching staff members and their equivalents written or oral warnings in cases of failure to discharge their duties. The University Director has the right to sign the punishments of warning or censure after completing an investigation and hearing the witnesses' testimonies and the defence. In such cases, the director's decision is final, according to Article 91 of ROATS 1997.

In my opinion, this decision cannot be more than the following:

- Revert the member to the Disciplinary Committee if he believes that the member needs to be punished by another strong punishment from the warning or censure.
- Take the Dean's opinion, for example, leaving it on the case file.
- Sign the punishments of warning or censure.
- Give a caution to the member.

5.6 Executable Punishments for Teaching Staff Members

With regard to Article 22⁹ of the Punishment Law of Employees¹⁰, the punishment allowable for execution on members of teaching staff according to Article 89 of ROATS 1997 must be as follows:

1. Warning.
2. Censure.

3. Deduction of salary not exceeding a net salary of three months. Deduction in every month should not exceed one third of net monthly salary.
4. Bonus withheld for one term.
5. Postponement of advancement for one year.
6. Dismissal.

After investigating a teaching staff member, the University Director can impose the warning and the censure punishments without submitting them to the Disciplinary Committee.

5.6.1 The Deletion of the Punishment

ROATS 1997 does not consider the basic law of deletion of the punishment that is allowable for execution on members of teaching staff.

Article 104 of ROATS 1997 states, Matters not included in the text of articles in this resolution shall be applied regarding to other regulations and resolutions executed in Saudi Arabia. Since teaching and academic staffs are civil servants then the Punishment Law of Employees as a general law for employees should apply to them in this sense.

According to Article 45 of the Punishment Law of Employees 1971, the deletion of the punishment needs three years time from the date issued. It is unquestionable that the employer of academic staff should not have delivered any further punishment in that period.

The method for deletion of the punishment is application to the

minister (the University Director) requesting deletion of the punishment. The Punishment Law of Employees does not mention if the deletion of the punishment is compulsory for the minister or not. In my opinion, it should be compulsory because it is necessary for the employee to seek further advancement.

5.7 Termination of Service of Teaching Staff Members

Termination of service of members of teaching staff should be for the following causes¹¹:

- Resignation (See Chapter 4.)
- Application for retirement and pension rights before the completion of the regular term of service designated in the retirement regulation (See Chapter 4.)
- Abolition of the post (ROATS 1997 does not identify how can this happen nor whether there is any possibility of the academic staff member continuing in an other post. However, the regulation of the civil servant¹² identifies such matter in Article 30/6, which states that the employee effected by the abolition of his post can be transferred to another post that has similar rank in the same ministry or institution. If such a solution is impossible, then the staff member could be transferred to a lower post and be subject to Article 18/G of the regulation of the civil servant. If such a transfer is impossible or the staff member refuses to accept the lower

post, his service is terminated¹³.)

- Health problems (See Chapter 4.)
- Absence without cause or refusal to transfer within 15 days¹⁴
- Dismissal for punishment (See 5.6.)
- Dismissal by royal order or cabinet minister decision if in the public interest (This situation would be treated as dismissal for punishment according to the order¹⁵. In such cases, the staff member can not be returned to service without royal order or cabinet minister decision¹⁶.)
- Teaching staff member, as they are civil servants, must be dismissed by virtue of law if he was convicted and penalised according to *Shariy'ah* law¹⁷ (a specific penalty in definite offences as per the Holy *Qur'ān*). Also if he was convicted and imprisoned for any offence against honour and honesty¹⁸. Also if he was imprisoned for a period exceeding one year¹⁹.

5.8 The Rules of Natural Justice

This study of the disciplinary procedures at Saudi universities clearly shows that such regulations have observed the rules of natural justice and emphasised the importance of applying these rules for all disciplinary procedures at the university. For example, the right to know the charges one faces is found in Article 86 of ROATS 1997 where the University Director is expected to inform teaching staff

members of the accusations faced and provide a copy of the investigation report. Another example is the right to be heard in one's own defence before the decision is made, as stated in Article 88 of ROATS 1997 where it states the person under investigation should be informed of the meeting to present his testimony and defence by himself or through his deputy who can be a lawyer.

5.9 Conclusion

This chapter has identified the regulations organising the affairs of the teaching staff at Saudi universities and has identified their duties and responsibilities in general and in teaching. The same regulations also detail the means of holding the teaching staff accountable to their positions. Hence, academic staff members hold a special position in society in general as well as in academic life. This special position carries over into the disciplinary structure since ROATS 1997 has provided specific discipline procedures for use within universities through the Disciplinary Committee. However, the final decision of the Disciplinary Committee, as I explained in p.102, is not under the judicial jurisdiction of the Board of Grievances. In my opinion, this fact should be reviewed to give academic staff members the opportunity to appeal disciplinary decisions, particularly, in cases of dismissal.

Throughout Part 1, I have discussed university law in Saudi Arabia in relation to the organisation of universities and to regulating members of the academic staff. Beginning with an overview of the legal

system of Saudi Arabia and the development of the educational system, which led to new higher education laws, the chapter moved on to cover the laws regulating university administration and autonomy and the specific affairs of teaching staff members. Part 2 will cover the laws regarding the universities and academic staff members in England so that a comparison can be made of the two higher education systems.

Notes – Chapter 5

¹ Article 39 of ROATS 1997.

² Ibid. Article 40.

³ Ibid. Article 51.

⁴ Ibid. Article 41.

⁵ For more details about the Board of Grievances, see Chapter 2.

⁶ Article 86 of ROATS 1997.

⁷ Ibid. Article 90.

⁸ Ibid. Article 85.

⁹ Article 22 states that “Resolutions of the committee shall be by majority, and a meeting shall not be valid unless attended by all members of the committee and the representative of investigation and inspection institution”

¹⁰ The Punishment Law of Employees was established by Royal Decree No. M/7 dated 1/2/1391 A.H. (corresponded to 21 March 1971 A.D.).

¹¹ Article 92 of ROATS 1997.

¹² The regulation of civil servant published by Royal Decree No. 49 dated 10/7/1397 A.H. (Corresponded to 23/9/1977 A.D.)

¹³ Article 30/6 of the regulation of the civil servant.

¹⁴ Ibid. Article 30/12.

¹⁵ Ibid. Article 30/17.

¹⁶ Ibid.

¹⁷ Article 30/16/A of the regulation of the civil servant.

¹⁸ Article 30/16/B of the regulation of the civil servant.

¹⁹ Article 30/16/C of the regulation of the civil servant.

Part 2: University Law in England

Chapter 6: Defining *University* in England

6.1 The Definition of the University

In this section I shall discuss the definition of a university in England in language and law.

6.1.1 The Linguistic Definition of *University*

The Oxford English Dictionary defines a university as “the whole body of teachers and students pursuing, at a particular place, the higher branches of learning; such persons associated together *as a society or corporate body having the power of conferring degrees* and other privileges, and forming an institution for the promotion of education in the higher branches of learning, the colleges, buildings etc., belonging to such a body”¹.

The power to award degrees is the quality most commonly associated with a university. *But does it have the same legal meaning?*

The St. David’s College case² in 1951 indicates that the word *university* is used to describe institutions that have powers to award degrees. In that case the Principal, Tutors, and Professors of St. David’s College, Lampeter, claimed against the Ministry of Education a declaration that the college was a university providing a university

education. The Ministry of Education had refused to treat the college as a university for the purposes of the Regulations for State Scholarships and University Supplemental awards, 1948³. Counsel for the plaintiffs had enumerated what he regards as the essential qualities, that justify an institution being described as a university and accepted by Vaisey, J. were as follows:

1. It must be incorporated by the highest authority (i.e., by the sovereign power).
2. To be a university, an institution must be open to receive students from any part of the world.
3. There must be a plurality of masters (i.e., there cannot be a university with only one teacher).
4. Teaching must be carried out in at least one of the higher faculties (i.e., theology, the Queen of sciences, law or philosophy, and medicine).
5. It cannot be a university without residents either in its own buildings or near at hand.
6. It must have power to grant its own degrees.

Vaisey, J. remarked,

In my judgement, the word "university" is not a word of art, and, although for the most part one can identify a university when one sees it, it is, perhaps, not easy to define it in precise and accurate language.... I have left until last what is stated to be the most obvious and most essential

quality of a university, that is, *that it must have power to grant its own degrees*. Here we find the very curious situation that the royal prerogative of granting degrees in the various faculties and branches of knowledge has been granted to this particular institution *subject to a very strict limitation*. It is only entitled to grant the degrees of Bachelor of Arts and Bachelor of Divinity. *It has not of its own essential power any right to grant degrees*, but to that limited extent the royal privilege has been acceded to it by royal concession.... If the word “university” is not one of art, I have to try to see what it means, regard begins had to those particular qualities, which I have enumerated.... I cannot bring myself to believe that such a man⁴ would say that St. David’s College, Lampeter, was a university.... I cannot help feeling that this *extraordinarily limited power of granting degrees*, which has throughout been regarded as being the test for the solution of this problem, is an indication that this institution falls short of a university properly so called.... It was never incorporated as a university, and, although the word may not have any technical significance and one can imagine a case in which a

teaching institution is given such plenary powers of instruction and so forth as would lead irresistibly to the conclusion that the Crown intended to make it a university.... Although I must not be supposed for one moment to think that a university has to be judged by its size or the number of its pupils or by the range of instruction, which it gives, still, size is a matter of some consideration.... A great many people, I think, might ignorantly be led to believe that St. David's College was part of the University of Wales.... Judging the matter both on broad principles and on the narrow principles of its limited powers and the absence of any express intention of making it a university by the sovereign power, I think that the plaintiffs have not discharged the onus of satisfying me that the college ought to be called and to be considered, in accordance with the proper meaning of the English language, a university⁵.

On the grounds that, the power to award degrees is the most important criterion to distinction between a university and other bodies, the next section will consider the power to award degrees by studying and analysing. This discussion begins with the body in charge of dealing with such matters.

6.1.1.1 The Privy Council

Historically the Privy Council was the name given to the group of ministers who acted as chief advisers to the King or Queen. As the power of the Monarch declined, the Cabinet replaced the Privy Council as the senior decision-making body⁶. Today the Privy Council's duties are largely formal and ceremonial. It has about 300 members, including all Cabinet members past and present, the leaders of all the main parties, and the Speaker⁷. Its formal tasks include authorising Orders in Council and making appointments to offices of the Crown.

The powers of the Privy Council in relation to the higher education were described by D. J. Farrington in the *Law of Higher Education*: "The powers of 'The Lords of Our Most Honourable Privy Council' in relation to higher education institutions are executive powers exercise by the relevant Ministers, nothing more nor less" ⁸. The powers of the Privy Council in relation to higher education are generally exercisable by virtue of statutory authority, such as Section 76 of the Further and Higher Education Act of 1992 (FHEA), which makes clear that the power to award degrees can be extended not only to polytechnics, but also to other higher education institutions that satisfy the Privy Council to have such a power. And Section 77 of FHEA 1992 showed that polytechnics are allowed to adopt a university name or to include it in their titles, by the consent of the Privy Council⁹.

The procedure used in relation to the Privy Council's power under the Education Reform Act 1988 is relatively unusual. It is not

always a normal prerogative or statutory order in Council (requiring the presence of the Queen or councillors of state) although this is still required for such matters as approving changes to the Royal Charters of pre-1992 universities¹⁰. The Act refers a power to make an Order upon the Privy Council that can be exercised by any two or more of the lords and other members of the Council¹¹. This applies to the designation of a Higher Education Corporation and to the modification of its instrument of government (Section 157 of ERA 1988) and its power to award degrees (Section 76 of FHEA 1992).

6.1.1.2 The Power to Award Degrees

Is the power to award degrees the only criterion of comparison between universities and other bodies? As we have seen in the case of St. David's College, the awarding of degrees is seen as one of the hallmarks of a "university". Then, *who has the power to award degrees?* According to Section 216 of the Education Reform Act of 1988 (ERA), only recognised bodies are empowered to award degrees. Universities and other bodies are designated as recognised bodies by the Secretary of the State order 1988¹². However, non-recognised bodies that provide degree courses under the auspices of a recognised body or that are a constituent of a university that is a recognised body can also award degree according to the same section. A list of non-recognised bodies is found in the Education Order 1988¹³. Thus, it is clear that bodies which fall within the list of recognised bodies or listed bodies can award degrees (e.g., universities and (originally) the Council National for Academic Awards [CNAA]). Section 76 of FHEA

1992, however, extends degree-awarding powers beyond the universities and CNAAs to a wider range of institutions providing higher education, including polytechnics. As a result of these changes, the CNAAs were dissolved¹⁴.

Thus, the power to award degrees is extended not only to polytechnics, but also to other higher educational institutions that the Privy Council decides should have such power. This means a body can award degrees, even if it is not a university, with the consent of the Privy Council; yet, there are no legal penalties for awarding degrees without that consent. In practice, the institution would normally need to demonstrate effective internal validation and review processes as well as *other criteria*¹⁵.

Although no other criteria are mentioned in Section 76, in a written answer¹⁶ on December 16, 1991, the Secretary of State suggested that the principal criteria would be, in general terms, “for taught-course degrees, an institution needs to be a self-critical, cohesive academic community with a proven commitment to quality assurance supported by effective assurance and enhancement systems”

Section 76 does not specifically define a university but it refers to higher education; so the question becomes *What does Higher Education mean?* Section 90 (1) of FHEA 1992 states that *higher education* has the same meaning as in ERA 1988.

Section 120 (1) of ERA 1988 states, “A local education authority shall no longer be under a duty to secure the provision for their area

of facilities for *higher education*, that is to say, education provided by means of a course of any description mentioned in Schedule 6 to this Act”¹⁷. Schedule 6 (1) in ERA 1988 (Courses of Higher Education) states, “The descriptions of courses referred to in section 121 (1) and 235 (2)(e) of this Act are the following:

- (a). A course for the further training of teachers or and community workers;
- (b). A post-graduate course (including a higher degree course);
- (c). A first degree course;
- (d). A course for Diploma of Higher Education;
- (e). A course for the Higher National Diploma or Higher National Certificate of the Business and Technician Education Council, or the Diploma in Management Studies;
- (f). A course for the Certificate in Education;
- (g). A course in preparation for a professional examination at higher level;
- (h). A course providing education at a higher level (whether or not in preparation for an examination)”.

In other words, all institutions that grant any course within the above list fall under the heading *higher education*. Since a university grants some of these courses, it falls within this heading; but bodies which are not universities also fall under *higher education*. In the end, the definition does not help us to understand what *university* means.

6.1.1.3 The Further and Higher Education Act 1992 Definition of *University*

Section 65 (5) of FHEA 1992 states, “In this section and section (66) of this Act ‘higher education institution’ means a university, an institution conducted by a higher education corporation or a designated institution.” Section 90 (3) of FHEA 1992 states,

In this Act “university” includes a university college and any college, or institution in nature of college, in a university; but where a college or institution would not, apart from this subsection, fall to be treated separately it shall not be so treated for the purpose of determining whether any institution is in England or Wales.

Neither of these sections define a university as such: the first establishes only that a university is a higher education institution; the second only refers to colleges that are parts of universities (e.g., Oxford and Cambridge).

The only definition of a university I found was in the Her Majesty Commissioners of Customs and Excise current VAT leaflet on education,¹⁸ which stated, “A United Kingdom University means a body providing higher education under a charter granted by the Crown or Parliament and awarding degrees which are recognised in the professional world”. It is clear from this definition that the university:

- Must provide higher education.
- Under Charter granted by the Crown or Parliament.
- Awarding degrees.

This definition would eliminate higher education institutions established under the Companies Act, such as the London School of Economics. Moreover, Acts of 1992 and 1988 make clear that all institutions whether they are universities, colleges, or corporate bodies that grant any course from Schedule 6 in 1988 Act (Courses of Higher Education), fall within the Higher Education sector. Thus, the above definition can apply not only to the universities but also to other bodies, such as, colleges and corporations bodies. Therefore, the definition does not help us to understand the value of the university.

6.1.1.4 When Can Institutions Call Themselves Universities?

Although, there is no clear statutory definition of university in the general Law of the Higher Education in England, the 1992 Act provided a practical method by which institutions may call themselves universities. Section 77 of FHEA 1992 deals with the above question¹⁹. It showed that polytechnics are allowed to adopt a university name or to include it in their titles with the permission of the Privy Council to ensure consistency and no duplication. However, Section 77 still leaves confusion:

- Bodies that called themselves universities before this law can presumably still do so without a legal definition.
- What if the body is entitled to change its name without the consent of the Privy Council (e.g., American College)?

Section 77 says that a change of name to university is controlled only if the consent of the Privy Council is needed under the instrument setting up the body, thus nothing seems to prevent a body outside Privy Council jurisdiction from calling itself a university. Still, the Privy Council accredits degrees under Section 76 and could therefore enforce Section 77 by refusing accreditation to universities not complying with Section 77.

Section 77 also means that the Privy Council can strictly consent even if body cannot award its own degrees. However, in a written statement on January 15, 1992, the Secretary of State set other criteria for extending the title *university* beyond the existing polytechnics. The criteria follows:

- At least 300 full-time equivalent higher education students are in a majority of the Polytechnics and Colleges Funding Council's (PCFC) nine academic programmes;
- There should be a higher education enrolment of at least 4,000 full-time equivalent students;
- There should be 3,000 full-time equivalent students in degree level courses; and
- Such institutions should have the power to award their own taught-course and research degrees.

Thus, there is no requirement that a range of subjects be offered for a body to call itself a *university*.

It is noteworthy that Section 77 of FHEA 1992 itself does not mention to the condition stipulated in the St. David College case. This

appears to override the St. David College case because the Privy Council can consent to a change of name whether or not the body has the power to award its own degrees. Although the Secretary of State stated in writing that a body must be able to award its own degrees, at the same time FHEA 1992 states the Privy Council can ignore the Secretary of State's statement.

In practice, however, the Privy Council takes into account the Secretary of State's statement and is unlikely to override the Secretary's decision because the Secretary is a member of the Privy Council and knows the criteria and conditions for naming an institution a *university*. Moreover, the Privy Council is largely a formal body giving legal form to government policies. This can be noted from Section 124 (D) (2)²⁰ from the 1988 Act, which makes clear that two members of the Privy Council are sufficient to exercise the relevant powers.

When the Privy Council has decided that an institution can not use the name *university*, the body may still fall under the higher education sector and be in all practical respects the same as a university even in awarding its own degrees. Then, *what value does **university** have if it falls under the same law and higher education category as another institution?* Several possibilities exist:

- Money received from the government.
- Prestige.
- Overseas recruitment.
- Research grants.

The absence of a legal definition for *university* required that I examine the origin of universities in England to find the concept that developed into this distinctive kind of institution.

6.1.1.5 The Pre-1992 Idea of a University in England

Historically, universities came into existence by some act of authority, such as papal grant or charter, and were governed by the prescriptions of that Act. In England, the charter was generally issued by the Pope as the natural authority since written learning was concentrated in the Church or even by a powerful king²¹. This charter laid down the rules that the Church ‘corporation body’ used to govern itself and, at the same time, recognised the qualifications or degrees awarded as a guarantee of standards. For example, Oxford received confirmation of its rights and privileges by Pope Innocent IV in 1254; and Cambridge was formally declared a *studium generale* by Pope John XXII in 1318²². These authorities started the process of deliberately calling into existence a *university* or community of scholars²³, also called a Medieval University.

Another reason for the rise of the Medieval University was because English students who were in Paris—as a result of the quarrel between Henry II and Becket—were required to return to England. This migration contributed towards the establishment of a *studium generale* or Medieval University at Oxford and Cambridge that took the University of Paris as a model²⁴. In addition, another reason was the need for teaching subjects that did not fall within the ecclesiastical curriculum. This Medieval University was not a local

institution concerned with the education of local people only; it was an institution for learning open to all where at least one *faculty* other than arts was given by a number of masters²⁵.

It is noteworthy that the earliest institutions to which the word *university* is commonly applied were the great medical school of Salern, law school in Bologna and theological school in Paris²⁶. However, exact dates cannot be given for their foundation; they existed many years before a Papal Bull was issued in their favour²⁷.

According to Sir Sydney Caine²⁸, two things are notable about the earliest universities:

- They were concerned only with a comparatively small section of the population—the men who were to go into the medical and legal professions and the higher ranks of the Church.
- They had freedom from detailed control by external authority, and they accepted as a moral basis the fundamental doctrines of Christianity.

In my opinion, the rise of English universities during the twelfth century can be explained as follows:

- A concourse of students and teachers were gathered in different seats of learning.
- The universities were needed to teach subjects that did not come within the ecclesiastical curriculum (i.e., medicine, law, and art).

- The teachers and students were beginning to organise themselves as centres of new ideas or new discoveries for their own self-government.
- The students required to return to England from the University of Paris established a *studium generale* at Oxford and Cambridge.

It could be concluded that the university in England during the twelfth century was not a local institution concerned with the education of the locals but an assembly of people from a wide area, which granted degrees and was accredited by a higher authority. Although, universities take their origins from formal charters granted by the Church or Head of the State, they were never founded by the state; they were simply bodies of persons, a corporation with no formal legal definition²⁹. It is true that private benefactors, trusts, and endowments of various kinds have founded traditional English universities such as those established before 1992; for example, the University of Newcastle was endowed by Lord Armstrong, a wealthy munitions manufacturer, and Catherine Cookson, a popular writer.

6.2 Conclusion

English law only deals with the name changes of bodies that were not already universities before FHEA 1992. Therefore, in my opinion, there are now the following essential practical conditions for becoming a university in the U.K.

1. It must provide courses of the kind specified in ERA 1988, which defined *higher education*. This includes degrees under a charter granted by the Crown or Parliament.
2. It must have the power to change its name with the consent of the Privy Council under Section 77 of FHEA 1992.
3. It must have the power to grant awards conferred by the Privy Council and recognised in the professional world.
4. Specified numbers of students must be in higher education courses³⁰.
5. The university education must be in a wide range of areas in the case of polytechnics³¹. No general requirement exists that universities provide a wide range of subjects.
6. It must have an academic and financial framework that has been approved by the Privy Council.

Notes – Chapter 6

¹ The Shorter Oxford English Dictionary on Historical Principles, by William Little, 1972. Italics mine.

² *St. David's College, Lampeter v. Minister of Education* (1951) 1 All ER 559. p. 561, per Vaisey, J.

³ (S.I. 1948, No. 1655)

⁴ Vaisey is not referring to the man in the street a man who, perhaps, has had no university education or no experience of what a university is but to the ordinary man who does know what a university is or who has received his education at a university.

⁵ Ibid. Note 2, Italics mine.

⁶http://194.130.56.40/hi/english/uk_politics/a-z_of_parliament/p-q/newsid_82000/82534.stm

⁷ Ibid.

⁸ D. J. Farrington, *The Law of Higher Education*, 1994, p. 88.

⁹ Powers of the Privy Council in this matter will be explained in more detail later in this chapter.

¹⁰ Farrington, op. cit., p. 89.

¹¹ Section 124 D (2) ERA introduced by Section 71 FHEA 1992.

¹² S.I. 1988 No.2036 (Recognised Bodies)

¹³ S.I. 1988 No.2034 (Listed Bodies)

¹⁴ By Section 80 of FHEA 1992.

¹⁵ White Paper *Higher Education*, paras. 65 and 66

¹⁶ Hansard, H.C. vol. 201, Written Answers, col. 31.

¹⁷ Section 120 (1) of ERA 1988, Italics mine.

¹⁸ Her Majesty's Customs and Excise, *Customs and Excise VAT leaflet on education* 701/30/1987, replaced by *Customs and Excise VAT leaflet on education and vocational training* 1997.

¹⁹ Section (77) of FHEA 1992 states,

“(1) Where

a) Power is conferred by any enactment or instrument to change the name of any educational institution or any body corporate carrying on such an institution, and

b) The educational institution is within the higher education sector, then, if the power is exercisable with the consent of the Privy Council, it may (whether or not the institution would apart from this section be a university) be exercised with the consent of the Privy Council so as to include the word “university” in the name of the institution and, if it is carried on by a body corporate, in the name of the body.

(2) The reference in subsection (1) above to a power to change the name of an institution or body includes any power (however expressed and whether or not subject to any conditions or restrictions) in the exercise of which the name of the institution or body may be changed; but the power as extended by that subsection has effect subject to any such conditions or restrictions.

(3) In exercising any power exercisable by virtue of this section to consent to a change in any name the Privy Council shall have regard to the need to avoid names which are or may be confusing.

(4) Any educational institution whose name includes the word “university” by virtue of the exercise of any power as extended by subsection (1) above is to be treated as a university for all purposes.

²⁰ Section 124 (D) (2) appears in section 71 of FHEA 1992, which states that: A power vested in the Privy Council may be exercised by any two or more of the lords and others of the Council.

²¹ Sir Sydney Caine, *British Universities Purpose and Prospects*, 1969, p. 25.

²² S. C. Roberts, *British Universities*, p. 9.

²³ Sir Sydney Caine, *op. cit.*, p. 25.

²⁴ S. C. Roberts, *op. cit.*, p. 8.

²⁵ John William Adamson, *A Short History of Education*, 1930, p. 32.

²⁶ Sir Sydney Caine, *op. cit.*, p. 25.

²⁷Sir James Mountford, *British Universities*, 1966, p. 2.

²⁸Sir Sydney Caine, op. cit., p. 26.

²⁹John William Adamson, op. cit., p. 32.

³⁰ Secretary of Education letter dated January 15, 1992.

³¹ Ibid.

Chapter 7:

Classification of English Universities

7.1 Introduction

To understand the classification of English universities it is necessary to know their history and their current position. English universities are classified into groups and sub-groups dependent on the method of their foundation, which ranges from medieval Papal Bulls to incorporation of a governing body under FHEA 1992 (See Chart 2). Each group of universities developed separately without any overall plan, although each generation copied features from previous generations. (See Appendix 2 for an alphabetical list of all higher education institutions in England.)

7.2 Universities of Oxford and Cambridge

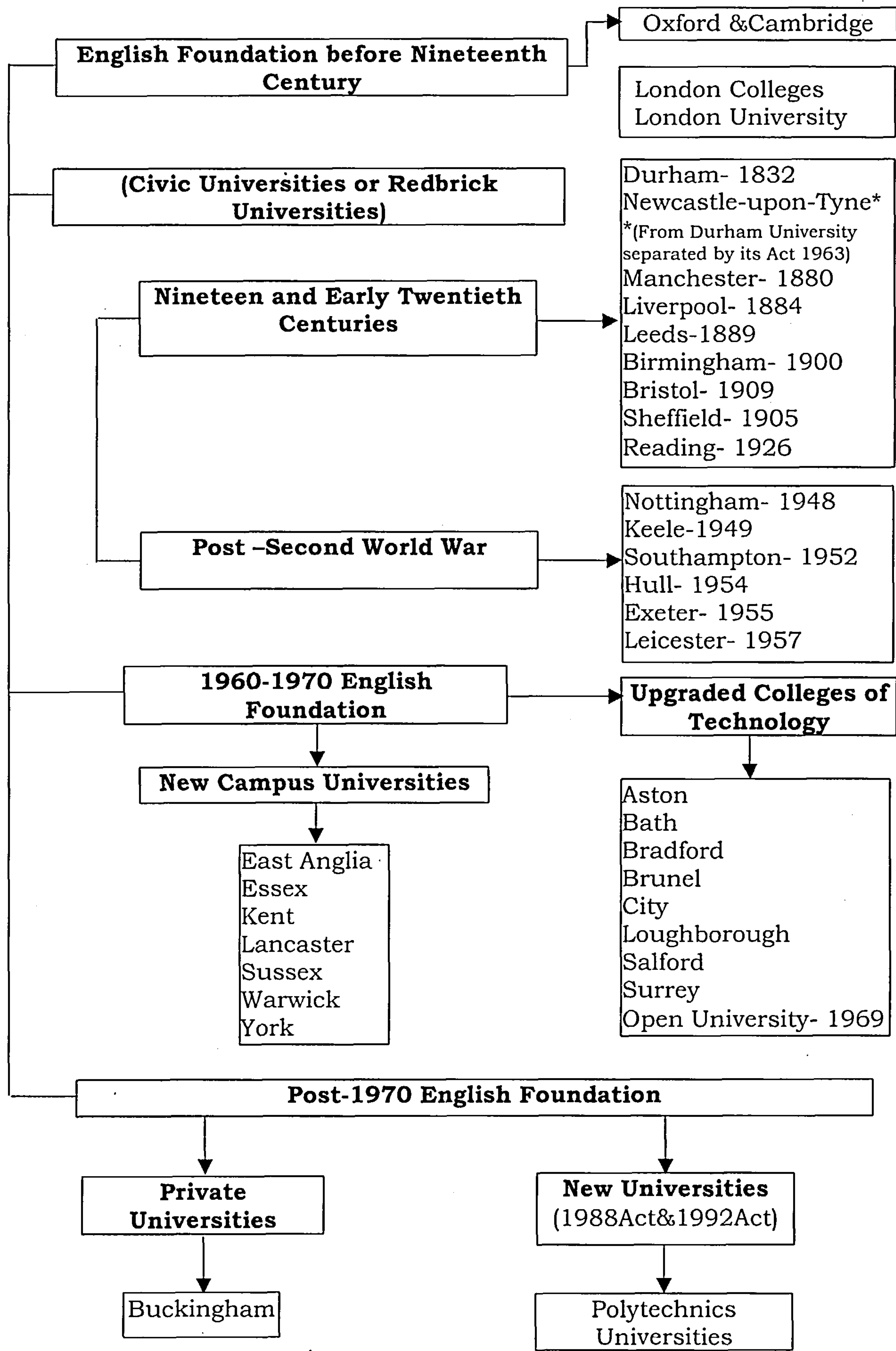
Until the end of the first quarter of the nineteenth century, Oxford and Cambridge were the only institutions recognised as universities in England. Oxford and Cambridge were founded as a result of the return of the students from Paris after the fight between Henry II and Becket. By around 1168, these students had established a *studium generale* at Oxford and Cambridge, taking the University of Paris as their model.

This is not the single reason for establishing Oxford and

Cambridge; another main reason was the need to teach subjects that did not come within the ecclesiastical curriculum.

Oxford University received confirmation of its rights and privileges by Pope Innocent IV in 1254; Cambridge was similarly confirmed in its rights and was formally declared a *studium generale* by Pope John XXII in 1318¹. These charters, liberties, and privileges confirmed by Act of Parliament in 1571. In addition, both universities consist of colleges and other bodies each having its own constitution and foundation².

Chart 2: Classification of Universities



7.3 The History of the University of London

London had no university of its own before the nineteenth century. The establishment of London University was motivated by poet Thomas Campbell who contributed a letter to the Times February 9, 1825, in which he plead for the establishment of a “great London university”. He had visited the German University of Bonn in 1820, and its constitution and programme of studies had impressed him. In this letter, Campbell took the proposed university as a means of educating the middling rich³.

In 1827, the new institution began and received the name University Colleges; classes were formed in art, law, and medicine. At that time, the foundation was without a charter; and its efforts to obtain one were successfully resisted by Oxford and Cambridge⁴.

On June 21, 1828, the Church of England founded a new college in London, King’s College, which was granted a Royal Charter of incorporation in 1829. The two new institutions did not have the power to award academic degrees, and this inability led to the establishment, again by Royal Charter, of the University of London in 1836. This charter created the University of London as a body with the power to perform all the functions of the examiners in the Senate House of Cambridge⁵. Thus, the University of London was not a teaching body but an organisation for examining candidates and conferring degrees⁶. In 1837, the government appointed the first Senate of the University of London, responsible for framing the

curriculum in arts. In 1887, King's and University Colleges decided to apply to the Crown for a charter giving them the authority to grant degrees in all faculties.

The University of London was the only English university allowed to grant degrees to candidates who were not residents of the university⁷.

As a result of the Robbins Report⁸ of 1963, the colleges or groups of colleges can apply for a charter of their own as separate universities. However, the relationships between the colleges in London and the university were clarified within the framework of a federal constitution empowered by the University of London Act 1978. At present, there is a range of constitutional arrangements within the University; for example, the London School of Economics and Political Science (1895) became a company limited by guarantee in 1901.

7.4 Civic (Redbrick) Universities

Civic universities were originally founded at the beneficence of local industrialists and tradesmen who saw the advantage of an institution of advanced learning for the economic development of their cities⁹. The scope of these universities has been widened to include new subjects (e.g., engineering, metallurgy, architecture, veterinary science, accountancy, and industrial management)¹⁰. Examples of this kind of university—awarded charters between 1900 and 1909—are Birmingham University, Victoria University, the University of Manchester and the University of Bristol. (See Chart 2).

The question that must be answered here is *What does "civic" mean?* Sir. James Mountford said in his book *British Universities*,

It is nothing more than that in all have their seat in a large town. It does not mean that the university, or the college which preceded it, was inaugurated or directly sponsored as a civic activity by the town, though that happens to be partly true, for example, of Liverpool; nor does it imply that financial help was immediately forthcoming, from the rates to launch or even support the institution: the college at Manchester did not have a penny from the city until it had been in existence for forty years nor does it mean that the university at that present time is a mainly local interest, drawing its students, a limited area all of them have grown to be institutions of national significance with a student population coming from all parts of the kingdom and from overseas, and above all, the term does not indicate that, even though the municipality may have a small minority of representatives on the governing bodies, the town controls the policy or the operations of the university in any way¹¹.

The civic universities were influenced by three strands of educational thinking. First, following the model of the ancient

universities was the notion of providing a liberal, all around education for people who were presumed to be potential leaders. This included social and moral as well as academic education. Second, there was the influence of the continental tradition of advanced scientific research. Third, with lesser status than the first two, was the history of providing a resource for local people. These ideas have influenced modern policy in the sense that universities are considered self-governing bodies with a large degree of independence from the state. Whether this is true today depends upon the extent to which a university depends upon state funding¹². This will be discussed later in this thesis. (8.2.5 Does the Government Have Control over English Universities?)

7.5 Universities of Durham and Newcastle upon Tyne

The University of Durham began as ecclesiastical foundation and was endowed from the revenues of Sea and cathedral chapter¹³. This University was established by an Act of Parliament in 1832, which enabled “the Dean and Chapter of Durham to appropriate part of the property of their church to the establishment of a University in connection therewith”. Durham’s charter was granted in 1866. In Newcastle, a Durham college of science was founded in 1871 as a part of the university. This became known as Armstrong College in 1904¹⁴.

A college of medicine and surgery in Newcastle had already come into association with the University of Durham in 1852. Thus, the University of Durham was a federal university consisting of three

practically autonomous institutions; each had full control of its own finances, of the appointment of its staff, and of its own teaching and discipline.

In 1937, the two colleges in Newcastle were combined to form King's College¹⁵, as recommended by the royal commission appointed in 1935. Another result was the end of the federal constitution of the University by grouping its constituent members under a single control for administration and finance.

The University of Durham and Newcastle upon Tyne Act 1963 now governs the University of Durham and led to the formation of the University of Newcastle as a separate body. The constitutions of both now closely resemble those of civic universities.

7.6 1960-1970 English Foundation

The universities established during the period of 1960-1970 resulted from¹⁶

- The Robbins Report of 1963, which recommended a large expansion in student numbers but (unlike more recent expansions) kept the traditional notion of a liberal education, and
- The higher education policy of the Labour Government of 1964-1970.

These types of universities consist of new campus universities and upgraded colleges of technology.

7.6.1 New Campus Universities

These universities were completely new foundations and include Sussex in 1961, York in 1963, East Anglia in 1963, Essex in 1964, Lancaster in 1964, Kent in 1965, and Warwick in 1965. They are unique in English experience because they are State foundations, while previous universities were founded by individuals or bodies other than the State.

Only these new campus universities have been founded by the State, with full State support from the beginning, not only for their running expenses, but also their capital expenses on buildings and equipment. Granted by Royal Charter at their origins, they have enjoyed the rights to grant their own degrees and control and plan their own curricula and methods of assessment in addition to their own structure and organisation. The main advantages of State foundation and finance are the rights to grant their own degrees and determine their own development, giving them freedom to innovate¹⁷ and making this type of university exceptional.

7.6.2 Upgraded Colleges of Technology

The Robbins Report of 1963 resulted in colleges being transferred into universities (upgraded colleges of technology), for example, Aston, Bath, Bradford, Brunel, City, Loughborough, Salford, and Surrey. They grew up in an atmosphere of ambition to attain university status, and they take into consideration the mixture between the fully developed with the traditional pattern to prove their

credentials by their orthodoxy¹⁸.

These kinds of interdisciplinary universities tried to break down traditional subject barriers. They have the same kind of autonomy as the older institutions, but their systems of government have been modified to reduce formal local lay control, to increase participation by non-professorial staff, and to allow students some voice in university government. The University Grants Committee saw these new universities as an opportunity for experimentation but appears to have been disappointed by the actual constitutions adopted which were very traditional¹⁹.

7.6.3 The Open University

Established by charter in 1969, the Open University is the last university established in England in the 1960s. Its students undertake various programs through television and radio broadcasts and face-to-face learning. Funded directly by the Department for Education (DFE) until 1993, The Open University is now funded in the same way as other universities by the Higher Education Funding Council of England (HEFCE)²⁰.

7.7 Post-1970 English Foundation

We can classify these kinds of universities as private universities (e.g., Buckingham) and new (polytechnic) universities.

7.7.1 Buckingham University

Buckingham University is a privately financed institution founded as the University College Buckingham in 1973. It failed to get government recognition as a university at that time. In 1983, it received a Royal Charter and remains the only English university that has degrees recognised under ERA 1988 but that does not receive a grant from the Funding Councils²¹. Thus, the University of Buckingham is not under the control of the government through the HEFCE; but the government was able to gain some control through the charter given to the university.

7.7.2 The New Universities

The period between 1988-1992 is one of the important changes in the modern history of higher education in England. The changes began when the PCFC was established by ERA 1988. As a result, polytechnics and certain other colleges have been transferred from local to PCFC authority for funding and general supervision. However, the biggest change occurred with FHEA 1992 providing a good opportunity for these institutions to use the word *university* in their title with the consent of the Privy Council. FHEA 1992 dissolved the PCFC and established the HEFCE. (See Chapter 6.)

7.8 Conclusion

It can be seen from this chapter that the criteria for the classification of English universities are the historical origin and the method of creation of these universities, which ranges from medieval

Papal Bull to incorporation of a governing body under the Further and Higher Education Act 1992. This classification can be summarized as follows:

- English foundation up to the First World War
- Nineteen and early twentieth centuries
- Post-First World War
- 1960-1970 English foundation
- Post-1970 English foundation

This classification also brought an understanding of how English universities are established by private bodies and not by the state, except for those established completely by the state after 1970.

Overall it is clear that the relationship between the state and the universities has changed since the universities historically began with private funding but are now receiving majority of their funding from public sources. Due to these changes, it is important to establish whether English universities are public or private bodies. This question is discussed in the next chapter.

Notes – Chapter 7

¹ See previous chapter.

² D. J. Farrington, *The Law of Higher Education*, 1994, p.14.

³ S. J. Curtis, *History of Education in Great Britain*, 1953, p. 408.

⁴ Ibid. p. 408.

⁵ Ibid. p. 409.

⁶ Ibid. p. 409.

⁷ Ibid. p. 415.

⁸ Report of the Committee on Higher Education, Cmnd 2154 (1963).

⁹ D. J. Farrington, op. cit., p. 15.

¹⁰ Sir. James Mountford, *British Universities*, 1966, p. 19.

¹¹ Ibid. p. 20.

¹² H. J. Perkin, *New Universities in the United Kingdom*, pp 25-33. See also, Newman, J., *The Idea of a University*, 1976.

¹³ S. J. Curtis, op. cit., p. 418.

¹⁴ Ibid. p. 419.

¹⁵ Ibid.

¹⁶ D. J. Farrington, op. cit., p. 17.

¹⁷ H. J. Perkin, op., cit., p. 17.

¹⁸ Ibid. p. 18.

¹⁹ UGC, *University Development 1957 - 1962*, 1964, p. 105.

²⁰ D. J. Farrington, op. cit., p. 17.

²¹ Ibid. p. 18.

Chapter 8:

Are English Universities Public or Private?

In order to determine whether English universities are public or private, two questions should be answered:

- What does Public Law mean?
- What different theories are there in relation to this matter and how has English Law developed?

8.1 Public Law

Public law is that area of law that concerns the relationship of government with private people and of different parts of the government with one other. Thus, public law contains both institutional and functional elements and deals with the powers and duties of the government¹, including, social security law, housing law, planning law, immigration law, criminal law, tax law, civil liberty law, and so on. The main point of Public Law is in interpreting Constitutional Law to ensure the government does not exceed or abuse its powers. Therefore, to understand Public Law, we must examine Constitutional Law and the British government.

8.1.1 The Definition of Constitutional Law in England

Constitutional law is that part of English law governing the system of public administration of the United Kingdom and relationships between individuals and the state. In the United Kingdom, however, defining constitutional law is difficult because of the absence of a written constitution as the sole or supreme source of legal authority for all public action, whether executive, legislative, or judicial².

This unwritten constitution consists of piecemeal legislation, the common law (case law), ancient enactments that have become part of the general common law—such as the Magna Carta (1215), the petition of Right (1627), and the Bill of Rights (1689)—and constitutional conventions that are binding in a political rather than in a legal sense. It is noteworthy that many of the constitutional rules governing the United Kingdom are individually to be found in written documents, such as, statutes, law reports, and parliamentary standing orders³.

The question that arises here is Why is there no written constitutional law in England? Lord Halisham pointed out in Halsbury's Laws of England that

The boundaries of English constitutional law have never been satisfactorily defined, partly because there is no constitutional document possessing an extraordinary sanctity or legally protected status, partly because the constitutional rules are

susceptible to change by more or less formal means, partly because many of the rules are not justiciable, and partly because the differences between public law and private law are not clear⁴.

The usual reason given for there being no written constitution is that the British constitution has gradually evolved without the kind of fundamental revolutionary event that has created the need for a new constitution in other countries⁵.

8.1.2 The English Government

The government may be defined as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations⁶ exercising public or governmental functions⁷.

Certain aspects of government law should be explained:

- Public authorities
- Public officers
- Public or governmental functions
- Distribution of government functions

8.1.2.1 Public Authorities

A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit⁸. Not every such person or body is definitely defined as a public authority or body; for example, the National Coal Board was not so defined in the Coal Industry

Nationalisation Act 1946, but the nationalised transport industries have now been placed in private profit ownership and their public interest functions regulated by special regulatory bodies. This illustrates the difficulty of distinguishing between public and private law.

8.1.2.2 Public Officers

A public officer is a person who discharges a duty in the performance of which the public is interested. Such person is more likely to be such if he is paid out of a fund provided by the public, but it does not necessarily follow that the fund must belong to the central government. But academic staff members are paid from a fund provided by public and they are not treated as public officers (the position of academic staff will be considered in detail later in Chapter 11).

8.1.2.3 Public or Governmental Functions

The fact that a person or body exercises functions of a public nature does not conclusively establish that such a person or body is a government authority. However, significant legal consequences may attach to a finding that a given function is public rather than private⁹. For example, the orders of certiorari and prohibition will issue to a body only if its functions are of a public and not merely private nature¹⁰.

In the case of *Foster v. British Gas PLC*¹¹ the issue was whether the British Gas Corporation could properly be described as part of the state for the purpose of liability under a European directive. Mann L.J.

agreed with the judgement of the Denning L.J., in the case of *Tamlin v. Hannaford* (1950) 1 K.B. 18, where he said:

These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government.

Moreover, the bodies which are authorised by law to provide public utilities, services, and supplies, (e.g. inland public transport by rail or other means, canals, docks, harbours, piers, lighthouses, electricity, hydraulic power and water) were previously public authorities, yet not governmental bodies in the sense of being part of the Crown. Accordingly, not every body exercising public authority is a governmental authority nor do its powers fall within the province of government. This helps us to understand that the university, which is

corporate body (as I shall explain later), cannot be described as a government body; but it might still be a body exercising public functions for some purposes.

8.1.2.4 Distribution of Government Functions

8.1.2.4.1 The Legislature

The body having supreme legislative power in the United Kingdom is the Parliament. It consists of the Queen and the House of Lords which is un-elected and the House of Commons, which is an elected body. The legislation passes through the Parliament and becomes Law upon royal assent. Bear in mind that the power of the Crown to veto legislation has not been exercised in over 280 years¹².

8.1.2.4.2 The Executive

The Crown is Head of State, and the supreme executive officer in the state. Most of the government functions are carried out in the name of the Crown. The Queen appoints the Prime Minister, who heads the Cabinet, as well as all other ministers on the recommendation of the Prime Minister. There are some Ministers in charge of departments of government who are not members of the Cabinet. These, with the whole of the Civil Service, the local authorities and other public bodies administer the laws made by the Legislature (the civil servant will be considered in detail later in Chapter 11).

8.1.2.4.3 The Judiciary

The judiciary is the third of the three principal branches of government. It is essential to the principle of legality or the rule of

law¹³ that those having the power to adjudicate in disputes between individuals and state institutions should be independent from the other branches of government. The courts range from the House of Lords, the final Court of Appeal in U.K., to Magistrates Courts. However, in England there is no special court for the matter related to public bodies and the common Law applies to both public and private bodies. But the ordinary court is usually has the power to ensure that public bodies do not exceed or abuse their powers and that they perform their duties, for examples:

- (a). Has not made an error of law;
- (b). Has considered all relevant factors and not taken into account any irrelevant factors.
- (c). Has acted for a purpose expressly or impliedly authorised by statute.
- (d). Has not acted in a way that is so unreasonable that no reasonable public body would act in that way.
- (e). That the public body has observed statutory procedural requirements and the common law principles of natural justice or procedural fairness¹⁴.

Although, the government of United Kingdom works in the name of the Crown and its powers derive either from enabling Acts of parliament or from the Royal prerogative, its decisions are subject to judicial review. This has been confirmed in the case of G.C.H.Q.¹⁵ when the House of Lords held that in legal principle the prerogative power could be subject to judicial review in much the same way as an

Act of Parliament or delegated legislation made under the Act.

As judicial review is the main reason of distinction between public and private law at U.K., then *Why a distinction is drawn between public and private law?*

8.1.3 The Distinction Between the Public and Private Body

The purpose of distinguishing between public and private body is to identify both the principles of Law that apply and the legal process that must be used. It is also importance to the study of administrative law, where we can identify the circumstances when the courts must have some power to intervene and to award a remedy to the aggrieved citizen when an authority act outside the power (*ultra vires*) given to it or abuses that power¹⁶.

The legal process that must be used to subject the activities of government from that which regulates the activities of private individuals is for the following reasons:

First, the government has a job of running the country; therefore, it must have some functions, powers, and duties that private individuals do not have, for example, the issuing of passports about which private law has nothing to say.

Secondly, because of the very great power which the government can wield over its citizen the law has traditionally imposed on governmental agencies special duties of procedural fairness which do not normally apply to dealing between private citizens. In this event the courts have developed a set of rules embodied in the doctrine of

ultra vires which force certain limitations on the substance of governmental actions and decisions.

Thirdly, the activities of government agencies are often subject to forms of public accountability, to Parliament, to which the activities of private individuals are not subject.

Fourthly, the view that the courts take of their proper role when dealing with the exercise of government power is different from the way they view their role in relation to purely private matters. In relation to affairs of private citizens the courts are the primary organs for interpreting, applying, and enforcing the law. But when they are dealing with matters involving other branches of government the courts take a more restrained view of their role.

It could be concluded that the important of distinction between Public and Private law for the legal system of any country could be one of three possible ways¹⁷:

- There maybe different jurisdictions;
- There maybe different rules of procedure;
- There maybe different bodies of law.

In United Kingdom the distinction between public and private law now plays a crucial role in determining:

- When it is necessary to bring proceedings by way of judicial review, under Order 53, with its distinct procedural requirements.
- By whom and against whom proceedings that raise public law issues can be brought.

- The principles which the court will apply and the role it will play in order to determine those issues.
- The remedies which may be granted.

How can we distinction between Public and Private law? To identify a public body, there are two criterions might be consider: One of them is the body's function, and the other is its source of power. (See Chart No.3, Public and Private Bodies, p. 159.)

If a body is a public body in the sense of a body created by the government, this does not necessarily mean that it is subject to public law in all respects. A public body might be subject to private law in some of its functions, and a private body might have certain public functions. This creates a problem in deciding the most important question in relation to public law—whether a decision of a body is subject to judicial review. For example, Private bodies sometime perform functions which we might consider to be public, for examples, private professional bodies such as the law Society or British Medical Association performs licensing functions designed to protect the public generally against unqualified practitioners. However, the distinction should be drawn between “function” and “mechanism” for example, governments make contracts just as private individuals do; governments own property in the same way as private citizens; governments also commit torts on occasion. The law of contract, torts, and property are central area of private law¹⁸, but the “function” of such governmental bodies remains wholly public. This fact has been confirmed by section 6 of the Human Rights Act 1998, where

convention rights are enforceable only against public function of public bodies.

Thus, the function of the body does not enable us to say which bodies are public or private but will help us to decide if the body is subject to judicial review. However, this is not conclusive. Another criterion that helps distinguish between public and private law is the legal source of the body's powers. The courts seem to use a mixture of the two tests in order to decide whether judicial review is available. I will examine this test as follows:

- If the bodies have statutory source (e.g., local authorities, courts, administrative bodies of all kinds, including regulatory bodies, and the holders of public office, including Ministers of the Crown) then these bodies are subject to judicial review in respect to those powers. However, it is possible for a statute to confer on a private body public function such bodies in this event could be subject to judicial review at least when they performing those functions.
- If the powers of the body derive purely from contract or agreement, whether exercised by government or by independent bodies, these powers are not subject to judicial review. However, if a public function is being performed, and contract law does not provide an aggrieved person with an appropriate remedy, then action taken under or in pursuance of a contract might be subject to

control by judicial review¹⁹. This also applies where the contract exists within a statutory framework or a wider government policy²⁰.

In my opinion therefore, the matter is not whether the body is public or private nor whether the source of the power derive from statute or contract. The matter however is the function. It is true that the function cannot decide if the body is public or private but will enable us to decide if such body is subject to judicial review or not as I explained previously.

It could be concluded that to be subject to judicial review the body must perform public function. However, not every body performing public function is necessarily subject to judicial review.

8.1.4 Public Body in European Union Law

The European Commission suggested various criteria which might bring a public body within the idea of the State in the case of *Foster v. British Gas PLC*. The first of these was the criterion of **carrying out a public function on behalf of the State**. That criterion covers public corporations established to run nationalised industries, such as the British Gas plc, public bodies which exercise regulatory powers and universities which award degrees recognised by the member states as the Commission suggested²¹. Another criterion was **the real state control over the body**. But the European Court of Justice concluded in above case that it does not appear possible to formulate one test to cover all possible situations might arise.

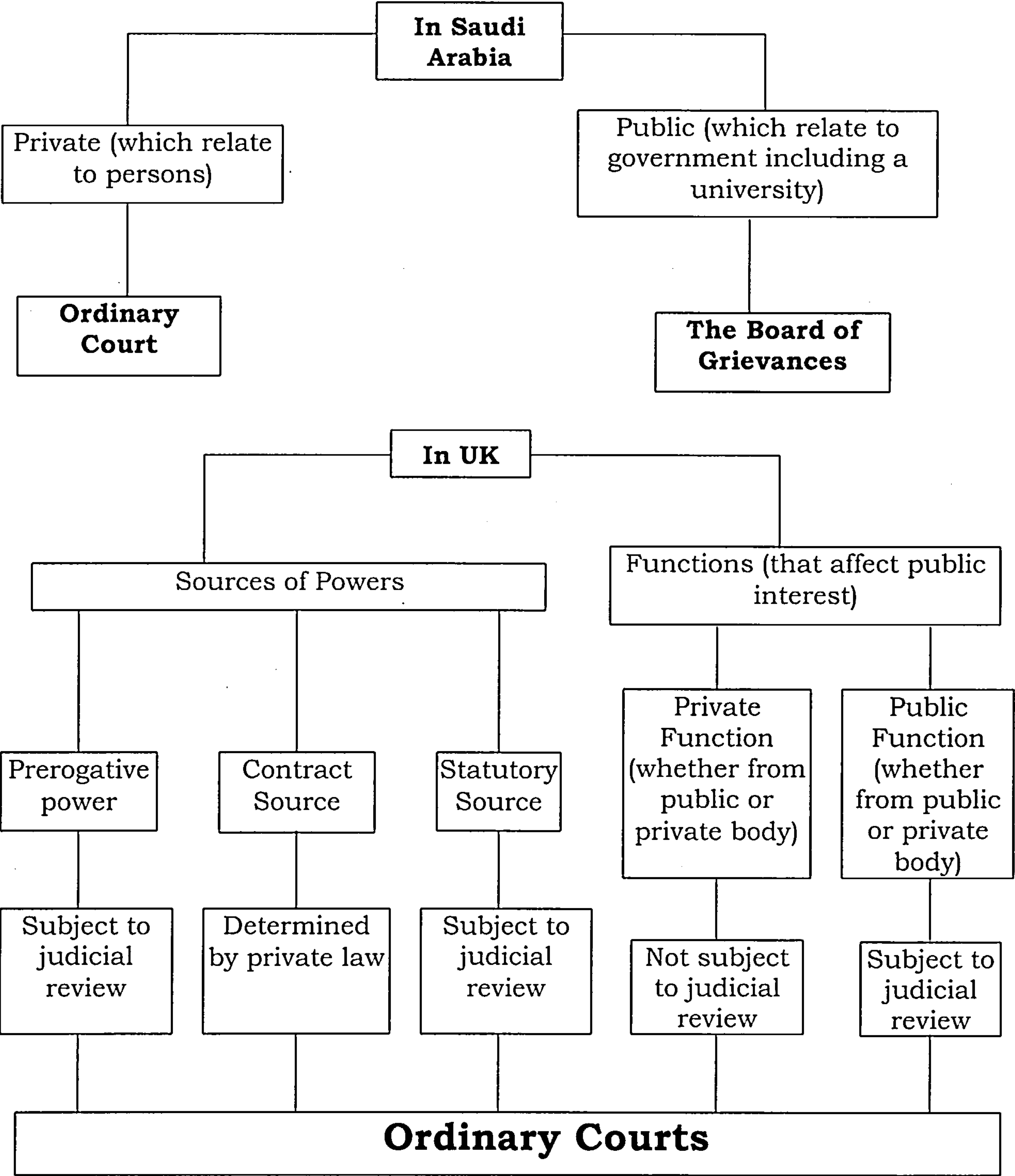
Moreover, the European law concerns about public body in other areas. For example, Article (1) of the Council Directive on procedures for the award of public works contracts²² defines a 'body governed by public law' as one

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
- having legal personality; and
- financed, for the most part, by the state, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities or other bodies governed by public law.

Accordingly, many of the functions of the universities and other higher education institutions may fall within the definition of bodies governed by public law and also within the European definition. In *Glynnev Keele University (Rep)*²³, a university's ability to suspend a student was reviewed by the Private law mechanism of an injunction. In 1969's *R v. Aston University Senate, ex parte roffey*²⁴, a university was reviewed by the Public remedy of certiorari; but this was criticised by Wade²⁵ on the ground that the university was not a public body because its powers were based on contract. However, since 1969, government powers over universities have increased so that some of

their functions may be subject to judicial review if they relate to the implementing of government policy and perhaps student discipline and status²⁶. On the other hand, purely contractual relationships with members of staff are not likely to be subject to judicial review. The matter is also complicated by the functions of the Visitor (discussed later in Chapter 13). The university's position in Saudi Arabia is more straightforward in the sense that all universities are public bodies governed by Public law.

Chart 3: Public and Private Bodies



8.1.5 What Does Judicial Review Mean?

Judicial review was described by Lord Diplock in the House of Lords in *O'Reilly v. Mackman*²⁷ in 1983. The House of Lords considered an action brought by writ in the case of four plaintiffs who were prisoners in Hull Prison charged with various disciplinary offences arising from riots in December 1976 and 1979. The plaintiffs claimed that the Board of Visitors in exercising their disciplinary functions had breached the rules of natural justice. Lord Diplock held that the prisoners' challenge to the legality of the Board's decision could not be made by ordinary writ but should have been made through the Application for Judicial Review under Order 53, now amended by Section 31 of the Supreme Court Act 1981.

Also, in the case of *Cocks v. Thanet*²⁸, the House of Lords considered whether a declaration and injunction sought by the plaintiff, Cocks, in the county court claiming that a local authority had breached its duty under the Housing (Homeless Persons) Act 1977 should have been brought under the Order 53 procedure for judicial review. The House of Lords concluded that the issues raised by the plaintiff were public law matters.

It is noteworthy that the protections given to public bodies by judicial review are

1. The requirement of obtaining leave to start the proceeding.
2. A time limit in the absence of "good reason" of three months within which to bring proceeding.
3. The absence of provisions for automatic discovery, placing its

availability firmly within the discretion of the court.

4. Cross-examination of deponents only allowed at the discretion of the court and not as a matter of courts.
5. Terms imposed as to cost and/or security as a condition of granting leave²⁹.

8.2 Legal Basis for Establishing a University in England

As we have seen, all universities established before 1960 were established by individual or corporate bodies. Thus, the state did not have any direct authority or legal relationship with them until the establishment of universities by the state in the 1960s.

This section will discuss the legal basis for establishing a university in England as a corporate body. I will discuss the following

- The definition of corporation
- The ways to establish corporate bodies
- The powers of corporations
- The granting of charters in England

8.2.1 The Definition of Corporation

The Concise Oxford Dictionary defines *corporation* as “a group of people authorised to act as an individual and recognised in law as a single entity, esp. in business”³⁰. One level of corporation is a Limited Liability Company, a specific legal form of organisation of persons and material resources recognised by the state for the purpose of conducting business³¹. Thus, a corporation is an organisation

recognised and created by law as a separate entity that allows people to associate together for *a common purpose* under a common name. As the law creates them, corporations must receive government approval before they are brought into effect; but this does not mean that the corporate body is a public body (as we will see later).

8.2.2 Ways of Establishing a Corporate Body

Identifying the methods for establishing a corporate body is important as it shows us the law that to be applied to that body. All kinds of corporate bodies, even those established by different methods, are subject to public judicial power, the relevant act, and internal laws or statutes. Law controlling corporate bodies usually consists of the following:

- The corporate powers and their capacity
- The rights and duties of the corporate body
- The relationship between the corporate body and its members, committees, other bodies, and third parties.

These points will be discussed later in this chapter.

Corporate bodies can be established in three main ways:

- By the grant of a charter in the exercise of the Royal prerogative (e.g., the University of Sheffield).
- By statute or Act of Parliament (e.g., the University of Newcastle upon Tyne).
- By registration under the Companies Acts (e.g., London

School of Economics).

8.2.3 The Powers of Corporation

Corporate bodies established by statute or incorporated by registration under the Companies Acts have their powers confirmed by their instruments of creation. Therefore, any kind of unlawful use of power can be charged by the doctrine of ultra vires³².

Does this mean these kinds of corporate bodies are public bodies? As we have seen in the discussion of public versus private bodies, if a body derives its power from statute and performs public functions, it is likely to be considered a public body and might be subject to judicial review. This does not mean, however, that the body must be public because the statute can confirm public function in private body; still, such a body might be subject to judicial review. In this event, the powers of the university incorporated by statute are limited and circumscribed by the statute, which supports the idea that these kinds of universities are *likely* to be public bodies; but they are *not necessarily* so. The matter is more to do with whom is subject to judicial review than whether the body is private or public. Hence, if the university is a corporate body performing public function, then it might be subject to judicial review.

Universities founded by the state do not perform government functions; they are corporate bodies founded by the state and perform public functions. Thus, the state foundation does not make them governmental authorities.

Corporate bodies that have been established by charters have the kinds of powers that an ordinary natural person of sound mind and of full legal capacity would have. Thus, they can hold land and enter into any contract as well as participate in the activities that any ordinary individual can. This has been mentioned by the dictum of Luxmoor J in *Attorney General v Leeds Corporation*³³:

The corporation was incorporated by Royal Charter in the year 1627 in the reign of King Charles I. The fact that it is incorporated by Royal Charter is of importance, because a corporation so constituted stands on a different footing from a statutory corporation, the difference being that the latter species of corporation can only do such acts as are authorised directly or indirectly by the statute creating it; whereas the former can, speaking generally, do anything that an ordinary individual can do.

English universities established by Royal Charter, or that had Royal Charters granted after their establishment (See Table 2), can do anything that an ordinary individual can do. The Royal Charter itself does not make them public bodies but merely gives the body its legal personality (as I shall explain later). In the case of *R. v. Disciplinary Committee of Jockey Club, ex parte Aga Khan*³⁴, which was incorporated by Royal Charter in 1970, the judge held that

Although the Jockey Club effectively regulated a

significant national activity exercising in the interest of the public powers which affected the public and although (per Sir Thomas Bingham MR) if it did not regulate that activity the government would probably be driven to create a public body to do so the Jockey Club was not in its origin, its history, its constitution or its membership a public body and its powers were in no sense governmental. Furthermore, the powers which the Jockey Club exercised over those who like the applicant agreed to be bound by the Rules of Racing derived from the agreement of the parties and gave rise to private rights on which effective action for private law remedies such as a declaration, an injunction and damages could be based without resort to judicial review. In those circumstances the disciplinary committee's decision to disqualify the applicant's horse was not susceptible to judicial review.

However, this does not always lead to a consistent approach. In *R. v. Panel on Take-overs and Mergers, exp. Datafin*³⁵ the judge held that: In determining whether the decisions of a particular body were subject to judicial review, the court was not confined to considering the source of that body's powers and duties but could also look to their nature. Accordingly, if the duty imposed on a body, whether expressly or by

implication, was a public duty and the body was exercising public law functions the court had jurisdiction to entertain an application for judicial review of that body's decisions. Having regard to the wide ranging nature and importance of the matters covered by the City Code on Take-overs and Mergers and to the public consequences of non-compliance with the code, the Panel on Take-overs and Mergers was performing a public duty when prescribing and administering the code and its rules and was subject to public law remedies. Accordingly, an application for judicial review of its decisions would lie in an appropriate case. Thus, in this case, the take-over panel was susceptible to review in spite of its not being created by statute or prerogative. This was due to the evidence that its powers would have been granted to the Department of Trade and Industry through legislation rather than through the informal rules set by the take-over panel. In this context, there are similarities between the Jockey Club and the take-over panel; but the former is not susceptible to review while the latter is.

8.2.4 The Granting of Charters in England

This section answers the following two questions:

- *What is the importance of the granting of charters for universities?* In other words, what are the advantages and disadvantages of granting charters?
- *What method should be used to grant charters in England?*

8.2.4.1 The Importance of the Grant of Charter

According to Lord Strathclyde the importance of a charter is as follows: "There is no special magic in a Royal Charter. It is merely a means of conferring a title and constituting the body with its necessary powers"³⁶. The only thing we can say about the importance of a charter is that British society usually prefers chartered universities, so the sponsor of a university usually applies for a charter from the Privy Council. Moreover, employers are more likely to recognise the degrees of chartered universities. In practice, the quality of the university is the quality of its staff and students. For this reason, a charter does not have any special advantage or give an institution any special qualities or status.

8.2.4.2 The Method for Gaining a Charter

It is clear that the English legal system defines the method that must be followed to gain a charter for a university or college. The Privy Council is responsible for charters and has made available a memorandum of general principle for the granting of charters in hope of discouraging frivolous applications. The College Charter Act 1871 provides that a charter application for founding any college or university referred by the Queen in council for the report of a Privy Council committee must be presented to Parliament, together with a copy of the draft charter, not less than 30 days before the committee report on it³⁷.

8.2.5 Does the Government Have Control over English Universities?

Depending on the source of influence, the government can control universities in different ways. These sources include the use of the royal prerogative, government departments and ministers, funding and research councils, professional bodies, government auditors, and the State through legislation. (Bear in mind that the government did not use legislation as a means of exerting control over the universities until ERA 1988³⁸.) While these bodies are discussed throughout Part 2, FHEA 1992 made the Higher Education Council the key organisation controlling universities.

**Table 2: English Universities Established by Royal Charter
or that Had Their Royal Charters Granted after Establishment**

<p>University of Oxford</p> <p>The University of Oxford, founded in the twelfth century, was incorporated by charter in the fourteenth century and confirmed by the Oxford and Cambridge Act 1571. For other statutes regarding the University of Oxford, see the Oxford University Acts of 1854, 1857, 1860, and 1862; the Oxford University, Vinerian Foundation, Act 1865; the Universities Tests Act 1871; the Universities of Oxford and Cambridge Acts of 1877 and 1923; the Universities and College Estates Acts 1925 and 1964; and the Universities and Colleges (Trusts) Act 1943.</p>
<p>University of Cambridge</p> <p>The University of Cambridge was founded early in the thirteenth century. Its incorporation by charter was confirmed by the Oxford and Cambridge Act 1571. For other statutes regarding the University of Cambridge, see the Cambridge University Act 1856; the Universities Tests Act 1871; the Universities of Oxford and Cambridge Acts of 1877 and 1923; the Universities and College Estates Acts of 1925 and 1964; and the Universities and Colleges (Trusts) Act 1943.</p>

University of London

Charters dated November 28, 1836, constituted the university and university college. Developed by various other charters in 1850, 1858, 1863, 1867, and 1878, it was reconstituted by the University of London Act 1898 (now repealed by the Statute Law [Repeals] Act 1977).

University of Durham

The University of Durham was founded by private Act (2 and 3 Will 4 c xix [1832]) and by charter dated June 1, 1837, and reconstituted by the University of Durham Act 1908 (repealed). It was reorganised in 1937 and 1963. See also the Universities and College Estates Acts of 1925 and 1964; the University of Durham Act 1935 (repealed); and the Universities of Durham and Newcastle Act 1963.

Manchester University

Founded as Owens College in 1851, Victoria University was created by charter dated April 20, 1880, and Victoria University of Manchester by charter dated July 15, 1903. See the Victoria University of Manchester Act 1904. The 1903 charter was revoked and replaced by a supplemental charter dated February 12, 1973.

University of Birmingham

Formed from Mason College (1880), it became a university college in 1908 and the University of Birmingham by charter dated March 24, 1900. See the Birmingham University Act 1900.

University of Liverpool

University College, Liverpool, was founded by charter dated October 18, 1881. Together with the Royal Infirmary Medical School, established in 1844, it became a constituent college of the Victoria University in 1884. It was incorporated as the University of Liverpool by charter dated July 15, 1903, (See the Liverpool University Act 1903) and reconstituted by a supplemental charter dated August 1, 1961 (amended August 1969).

University of Leeds

The Yorkshire College of Science, founded in 1874, became a constituent college of Victoria University in 1887 and was reconstituted as the University of Leeds by charter dated April 25, 1904.

University of Sheffield

Firth College, founded in 1879, was merged with a medical school and a technical school in 1897 to form a university college which, by charter dated May 31, 1905, became the University of Sheffield.

University of Bristol

Founded as a university college in 1876, the University of Bristol was created by charter dated May 21, 1909.

Reading University

A university extension college, associated with the University of Oxford, was founded at Reading in 1892. It became a university college in 1902 and the University of Reading by charter dated March 17, 1926.

University of Nottingham

Founded as a university college in 1881 and incorporated in 1903, the University of Nottingham was granted its charter on August 20, 1948.

University of Southampton

The Hartley Institute, founded at Southampton in 1862, became a university college in 1902. The University of Southampton was created by charter on April 29, 1952.

University of Hull

A university college was incorporated at Hull on October 7, 1927. It became the University of Hull by charter dated September 6, 1954.

University of Exeter

The Exeter Technical and University Extension College was founded in 1893. Renamed the Royal Albert Memorial College in 1899, it was reorganised as a university college in 1901. It became the University College of the South West of England in 1922 and the University of Exeter by charter dated December 21, 1955.

University of Leicester

The Leicester, Leicestershire and Rutland College, founded in 1918, changed its name to University College, Leicester, in 1927, and was incorporated by charter dated December 4, 1950. It became the University of Leicester by charter dated May 1, 1957.

University of Sussex

The University of Sussex was founded at Brighton by charter dated August 16, 1961.

University of Keele

The University College of North Staffordshire, incorporated by charter dated August 11, 1949, became the University of Keele by charter dated January 26, 1962.

University of East Anglia

The University of East Anglia was founded at Norwich by charter dated January 7, 1963.

University of Newcastle upon Tyne

A medical school at Newcastle upon Tyne, founded in 1934, became the medical school of the University of Durham in 1852 and joined with a college of physical science (later Armstrong College [1871]) to become King's College in 1937. The Newcastle division of the University of Durham, by charter dated August 1, 1963, became the University of Newcastle upon Tyne. See the Universities of Durham and Newcastle upon Tyne Act 1963.

University of York

The University of York, which is organised on a collegiate basis, was founded by charter dated October 1, 1963.

University of Lancaster

The University of Lancaster, which is organised on a collegiate basis, was founded by charter dated September 14, 1964.

University of Kent

The University of Kent at Canterbury, which is organised on a collegiate basis, was founded by charter dated January 4, 1965.

University of Essex

The University of Essex was founded at Colchester and incorporated as a limited company on September 21, 1962. It was granted a charter on January 11, 1965.

University of Warwick

The University of Warwick was incorporated at Coventry by charter in 1985.

The City University

The Northampton Polytechnic institute was founded in the City of London on June 1, 1907. It became a college of advanced technology in 1956 and was incorporated as The City University by charter dated April 6, 1966.

Loughborough University of Technology

Loughborough Technical Institute was founded in 1909 and became Loughborough College in 1918. Part of it became a college of advanced technology in 1956 and was constituted as Loughborough University of Technology by charter dated April 19, 1966.

University of Aston in Birmingham

The Birmingham Municipal Technical School was founded in 1895. In 1927 it became the Central Technical School, in 1951 the College of Technology, and in 1956 the first designated college of advanced technology. It was constituted the University of Aston in Birmingham by charter dated April 22, 1966.

Brunel University

Acton Technical College was founded in 1928. The section dealing with higher education became Brunel College in 1956 and in 1962 was designated a college of advanced technology. It moved to Uxbridge and was constituted Brunel University by charter dated July 6, 1966.

University of Surrey

The Battersea Polytechnic Institute, founded on June 23, 1891, became a college of advanced technology in 1956 and was reconstituted at Guildford as the University of Surrey by charter dated September 1966.

University of Bradford

The Bradford Mechanics Institute was founded in 1882. It became a college of advanced technology in 1957 and, by charter dated October 18, 1966, was constituted as the University of Bradford.

University of Bath

The Bristol Trade School, founded in 1856, came under the patronage of the Society of Merchant Venturers in 1880 and in 1894 became the Merchant Venturers' Technical College. Control passed to the Bristol education authority in 1949, and in 1960 it was designated as a college of advanced technology. It became independent in 1962 and was granted a charter as the Bath University of Technology on October 25, 1966, when it moved to a new site at Claverton Down, Bath. See the Bath University of Technology Act 1967. The charter was amended in March 1971 when the university became the University of Bath.

Salford University

The Royal Technical Institute, later the Royal Technical College, was founded at Salford in 1896 and became a college of advanced technology in 1956. It was reconstituted as the University of Salford by charter dated April 4, 1967.

The Open University

The Open University, originally the University of the Air, was created by charter dated May 30, 1969, since then it has received grant in aid. See Treasury Minute dated November 5, 1970.

Buckingham University

The University of Buckingham, founded in 1973, was incorporated by charter in 1983.

8.3 Conclusion

This chapter addressed the constitutional law in England to identify the legal definition of the British government, including its public authorities, public officers, and distribution of government functions. These explanations assist our understanding of the public body and public function in England so we can identify the criteria that can be applied in distinguishing between English public and private bodies. The result of this examination was that no specific criteria exist that can be applied to identify public and private bodies; every criterion applies to a specific case and is not suitable for application to all cases.

This conclusion points to the question that should be asked in England: We should not ask which are public or private bodies but which are subject to judicial review. If the body is subject to judicial review, it can be treated as a public body even if it is in reality private. If the body is not subject to judicial review, it is not necessarily a private body. I have argued that a university has public functions sufficient to make some of its decisions subject to judicial review.

Next, the chapter identified the legal basis for establishing a university and determined that English universities are corporate bodies established by charters that do not provide them with any legal advantage.

In identifying the extent of the English government's control over universities, we found that the Higher Education Funding

Council for England has some control over the universities. The HEFCE is discussed in more detail in the next chapter.

Notes – Chapter 8

¹ John Alder, *Constitutional and Administrative Law*, 1994, p. 12.

² *Halsbury's Laws of England: Constitutional Law and Human Rights*, 1996, vol. 8 (2), para. 1, p. 7.

³ Ibid. footnote 13, para. 1, p. 8.

⁴ Ibid. para. 1, p. 7.

⁵ John Alder, *Constitutional and Administrative Law*, 1999.

⁶ *R v. Panel on Take-overs and Mergers, ex parte Datafin PLC* (1987) QB 815, (1987) 1 All ER 564, CA

⁷ *R v. Disciplinary Committee of the Jockey Club, ex parte Aga Khan* (1993) 2 All ER 853, (1993) 1 WLR 909, CA (Jockey Club not exercising governmental functions).

⁸ *Halsbury's Laws of England: Administrative Law*, 1989, vol. 1 (1), para. 6, p. 8.

⁹ Ibid. para. 8, p. 9.

¹⁰ Ibid. Note 5.

¹¹ *Foster v. British Gas PLC* (1988) ICR 584, CA.

¹² Microsoft Encarta 97 Encyclopaedia 1993-1996, Microsoft Corporation.

¹³ The rule of law is a political principle the classic exposition in Dicey's *Law of the Constitution* (10th ed., 1959) p. 187. Dicey identified three principles that together establish the rule of law:

The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power.

Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts.

The law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts.

Dicey was criticised for his dislike of the distinction between courts. (See Jennings, *The Law and the Constitution [1959]*). In France, for example, the special administrative courts (*Conseil d'Etat*) can provide strong control of government and

protections for the individual. Saudi Arabia has such a body, the Board of Grievances. Contrary to Dicey, only ordinary courts could do so.

¹⁴See Clive Lewis, *Judicial Remedies in Public Law*, 1992, p. 1.

¹⁵ G.C.H.Q. (1984) 3 All ER 935.

¹⁶ Teler Leyland and Terry Woods, *Textbook on Administrative Law*, 2nd ed., 1997, p. 130.

¹⁷ Michale Taggart, *The Province of Administrative Law*, 1997, p. 197.

¹⁸ Peter Cane, *An Introduction to Administrative Law*, 1986, p. 5.

¹⁹ de Simith, Woolf & Jowell, *Judicial Review of Administrative Action*, 1995, 5th ed., p. 178.

²⁰ *Mclaren v. Home Office* per Woolf. J. (1990) IRLR 338.

²¹ (1990) 3 All ER 897 at 917.

²² Council Directive (EEC) 71/305 as amended by Directive (EEC) 89/440.

²³ (1971) 2 All ER 89.

²⁴ (1969) 2 Q.B. 538.

²⁵ Wade, William, *Administrative Law*, 1994, p.529.

²⁶ See *R v. University of Nottingham ex. Parte Ktorides* (1998) E.L.R. 184, and *R v. University ex. Parte Caesar Gordon* (1991) 1 Q.B.124.

²⁷ *O'Reilly v. Mackman*, (1983) 2 A.C. 237.

²⁸ *Cocks v. Thanet*, (1983) 2 A.C. 286.

²⁹ Graham Aldous and John Alder, *Applications for Judicial Review: Law and Practice of the Crown Office*, 1993, p. 111.

³⁰ The Concise Oxford Dictionary, 9th ed., 1995, p. 299.

³¹ Encyclopaedia Britannica, 1998, software.

³² Dennis Farrington & Frank Mattison, *Universities and the Law*, 1990, p. 5.

³³ (1929) 2 ch 291 at 295.

³⁴ Op. cit. Note 6.

³⁵ Op. cit. Note 5.

³⁶ Lord Strathclyde House of Commons, *Official Report*, col. 1467, 12 March 1992.

³⁷ Op. cit. Note 26, p. 6.

³⁸ D. J. Farrington, *The Law of Higher Education*, 1994, p. 87.

Chapter 9:

Higher Education Funding

9.1 Introduction

There are different sources of finance for higher education institutions in England, such as,

- The Higher Education Funding Council for England (HEFCE), which is governmental funding
- British and other student fees
- Research councils that provide grants for specific research projects, such as, the Biotechnology and Biological Sciences Research Council, Economic and Social Research Council, Engineering and Physical Sciences Research Council, Medical Research Council, Natural Environment Research Council, and Particle Physics and Astronomy Research Council.
- U.K. Charities
- Residences and Catering
- International student fees
- Government departments, such as, the Department of Health.
- Consultancies and other services (The scope of such consultancies and services are wide ranging, from advice

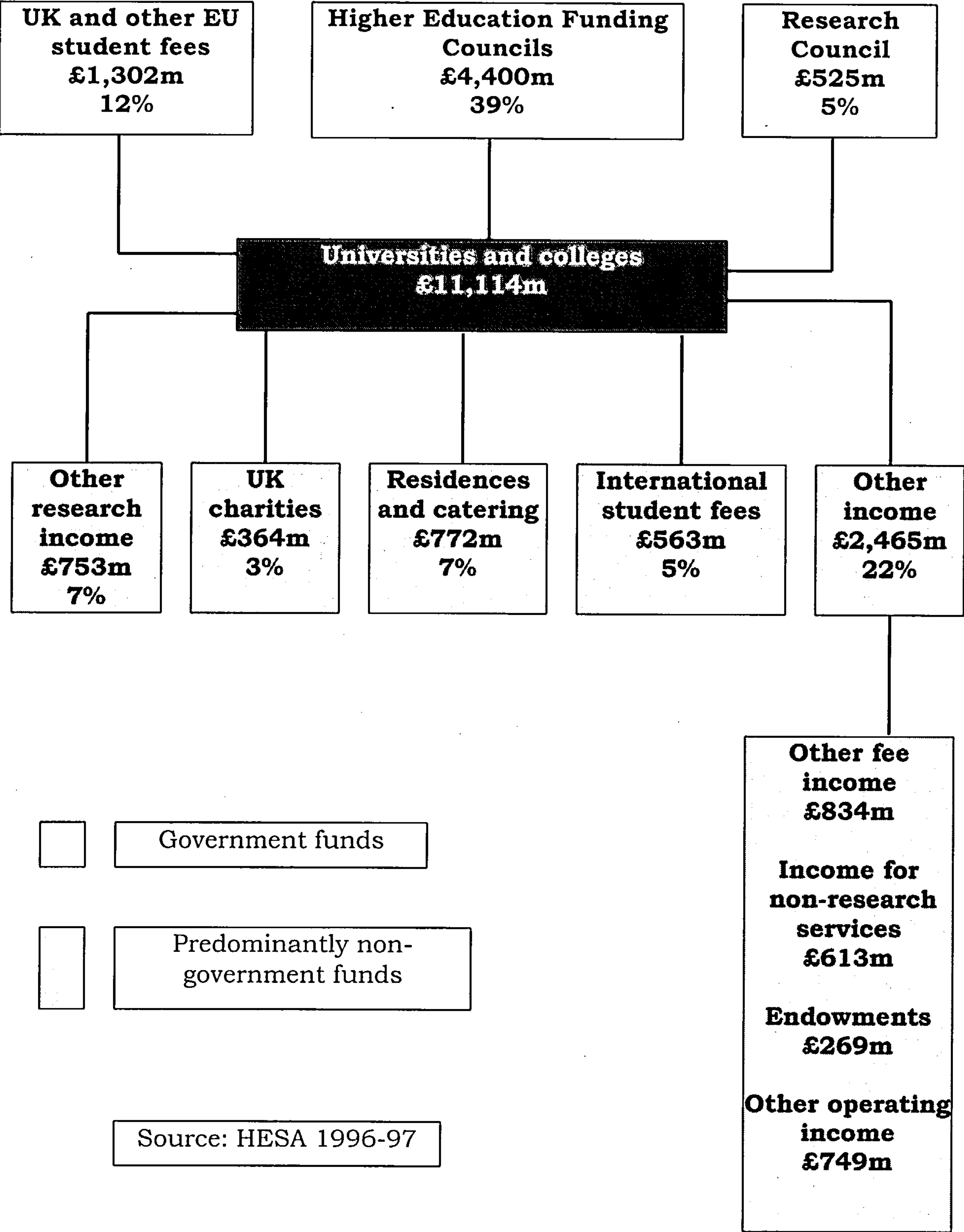
on business development to the testing of products and goods, and the letting of university accommodation.)

- Endowments and donations
- Sponsorship of posts (including, in particular, professorial chairs, often in areas of immediate interest to the sponsoring company and sometimes for a fixed term)
- Interest earned on cash balances and investments
- Income from the exploitation of the results of particular pieces of research or inventions that have commercial applications
- Teaching contracts for specific customers (nursing, other medical professions, further education, initial teacher training)
- Income from short courses

(See Chart 4 for a list of the main sources of funding for English higher education institutions.)

This chapter deals with the important sources of finance for higher education institutions (universities and colleges) in England (HEFCE). The higher education funding body in Scotland (SHEFC) and Wales (HEFCW) and the Department of Education, Northern Ireland (DENI) are beyond the scope of this chapter.

Chart 4: Sources of Finance for Universities and Colleges 1996-97

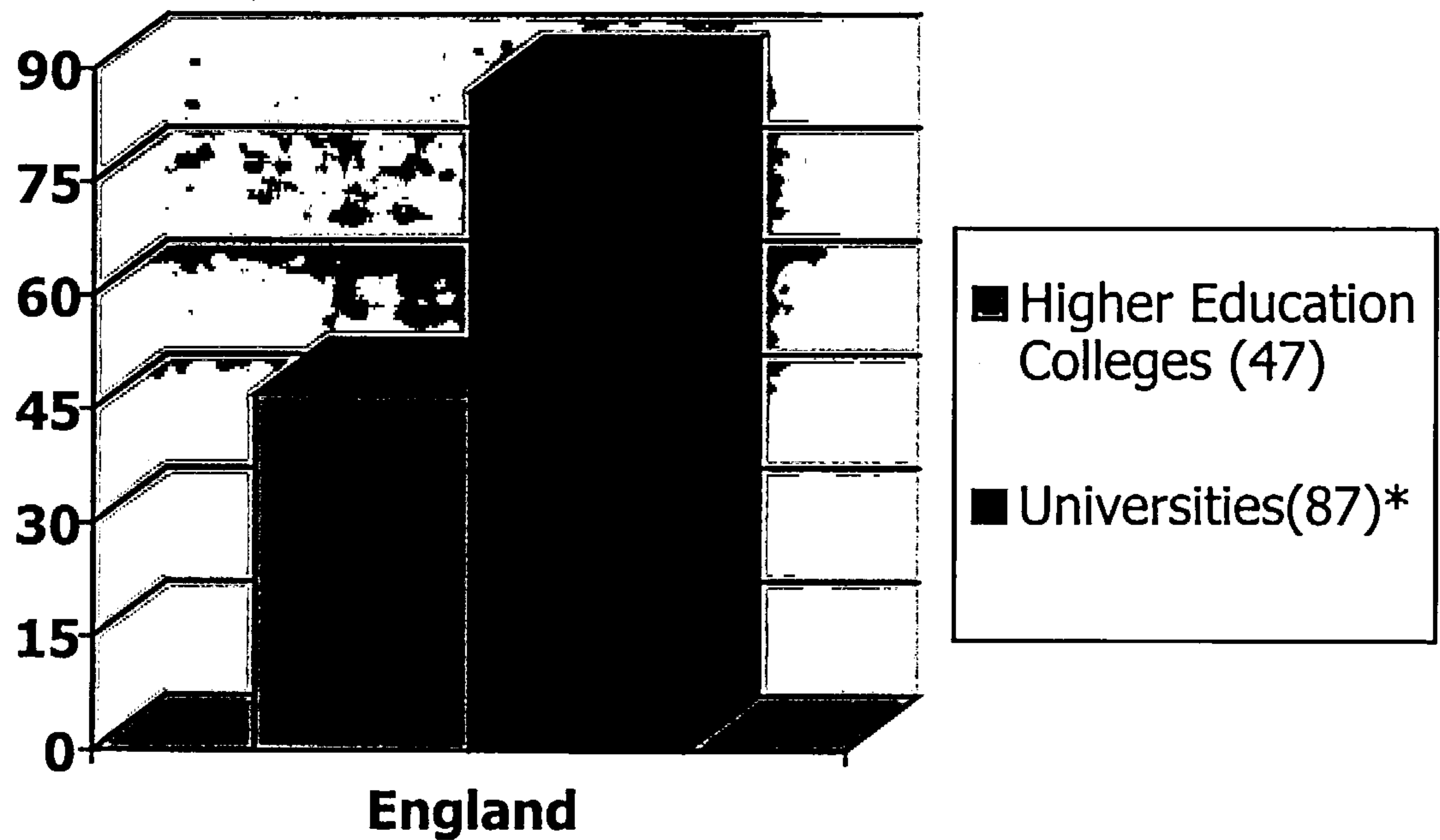


9.2 Higher Education Funding Council for England (HEFCE)

In 1988, the ERA created the Universities Funding Council (UFC), as recommended the Crohan report (*Review of the University Grants Committee*). The UFC was responsible for distribution of funds to universities in England. The ERA 1988 also created the Polytechnics and Colleges Funding Council, which was responsible for distribution of funds to polytechnics and to colleges of higher education in England. In 1992, FHEA dissolved these bodies and established the Higher Education Funding Council for England¹.

The new Funding council is responsible for funding all the government-funded higher education institutions in England². The HEFCE's main roles are to advise the Secretary of State for Education on the funding needs of higher education and to distribute funds made available to it by its respective Secretary of State for the provision of education and the undertaking of research by universities and colleges in England. (See Chart 5.) In addition, HEFCE funds prescribe courses of higher education taught in further education colleges in England.

**Chart 5: Universities and Higher Education Colleges in
England**



* Includes 16 schools of the University of London

Source: The Guide of Higher Education in the United Kingdom,
published by HEFCE, January 1999.

Hence, the main source of funding for higher education institutions in England is the grant made available annually to the HEFCE from the Department of Education. This grant is determined after the announcement of the government's unified budget each November. Thus, the HEFCE is operating within policy and funding contexts set by the British government even though it is a non-governmental public body³. It is a corporate⁴ body with powers restricted by FHEA 1992. This council, however, is not a servant or agent of the Crown and does not enjoy any status, immunity, or privilege of the Crown⁵. However, it is very clear that the HEFCE is performing a "public" function and its actions might be subject to judicial review⁶. The HEFCE has no general duty to give reasons for its decisions⁷.

9.2.1 HEFCE Members

According to Section 62 (2) of FHEA 1992, the Secretary of State appoints to the HEFCE not less than 12, nor more than 15, members, one of whom is appointed Chairman. In appointing members of the Funding Councils, the Secretary of State⁸ is to select persons who have experience and have shown capacity in the provision of higher education; in any position carrying responsibility for the provision of higher education; in industrial, commercial, or financial matters; or in the practice of any profession.

Thus, HEFCE members are to be selected based on personal qualities rather than as representatives of sectional interests⁹. (For

details about the supplementary powers, chief officer, tenure of council members, salaries, allowances, pensions, council staff, committees, proceedings, application of seal, and proof of instruments, accounts, and status of the council, see Schedule 1 of FHEA 1992.)

9.2.2 HEFCE Responsibilities

According to Section 65 of FHEA 1992, the responsibilities of the HEFCE are as follows:

1. The HEFCE is responsible for administering funds made available to it by the Secretary of State and *others* for the purposes of providing financial support for eligible activities.
2. Activities eligible for funding are
 - The provision of education and the undertaking of research by higher education institutions in England
 - The provision of any facilities, and the carrying on of any other activities, by higher education institutions in England that the governing bodies of those institutions consider necessary or desirable for the purpose of or in connection with education or research
 - The provision of prescribed courses of higher education by English institutions maintained or assisted by local education authorities or by English institutions within the further education sector
 - The provision, by any person, of services for the purposes

of or in connection with the provision of education or the undertaking of research by institutions within the higher education sector.

Two key points draw attention here. The first is that it is not clear who the *others* referred to in subsection 1 are. *Are they the other sources of public funding not available to the Council at present?* The Secretary of State's powers to impose conditions on grants made to the Council extends to grants made by them only¹⁰. If the Councils secured other sources of funding, they would no doubt carry conditions of their own. Second, in subsection 2, the activities eligible for funding include the provision of *education*, not *higher education*, so the Council could fund courses not covered under the definition of *higher education*.

9.2.3 Grants, Loans, and Other Payments

According to Section 65 (3) of FHEA 1992, the Funding Councils can make grants, loans, and other payments to the governing body of any higher education institution, or to any other persons, subject to such terms and conditions as the Councils think fit. These advantages are created by FHEA 1992, not inherited from ERA 1988; but FHEA does not provide a clear definition of *other payments*.

The Section 65 (3) of FHEA 1992 makes clear the terms and conditions within which a Council may make any grants, loans, or other payments. These terms

- enable the Council to reacquire the repayment, in whole

or in part, of sums paid by the Council upon non-compliance with any of the terms and conditions to which the sums were subject.

- require the payment of interest in respect of any period during which a sum due to the Council in accordance with any of the terms and conditions remains unpaid, but shall not relate to the application by the body to whom the grants or other payments¹¹ are made of any sums derived otherwise than from the Council.

9.2.4 The Secretary of State's Powers

The powers of the Secretary of State under FHEA 1992 can be summarised as follows:

- (a). To give general directions to the Council¹².
- (b). To require in composition and advice from the Council in such manner as the Secretary of State may determine.
- (c). To confer or impose on a Council such supplementary functions relating to the provision of education as the Secretary of State thinks fit¹³.
- (d). To designate institutions as eligible to receive funds administered by a Council and to transfer further education corporations to the higher education sector once they meet the student enrolment figures required for membership of that sector¹⁴.
- (e). To direct the Council to make provision for the assessment of

arrangements for maintaining academic standards (academic audit as distinguished from quality assessment)¹⁵.

- (f). To direct that the financial year of higher education corporations should begin on a specified date¹⁶.
- (g). To appoint the members of the Funding Council¹⁷ as explained above.
- (h). To make grants to the Council for the purpose of providing financial support for *eligible activities* as defined in Section 65 (2) of FHEA 1992, subject to such terms and conditions as the Secretary of State may determine¹⁸. According to Section 68 of FHEA 1992, the terms and conditions
 - may, in particular, impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, before financial support of any amount or description so specified is provided by the Council in respect to activities of the institution.
 - shall not otherwise relate to the provision of financial support by the Council with respect to activities carried on by any particular institution or institutions.

The Secretary of State cannot, however, impose conditions on specific institutions¹⁹, nor to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised, or assessed), nor to the criteria for the selection and appointment of

academic staff and the admission of students²⁰. Still, such terms and conditions may, in particular²¹,

- enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him upon non-compliance with the terms and conditions to which the sums were subject
- require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

These requirements, therefore, protect a certain degree of university independence from the state. However, given that a large proportion of university funding depends on HEFCE, university autonomy is limited to the detailed operational level in practice.

9.2.5 Supervision of Funding

In 1998-99, HEFCE was responsible for substantial sums of public funding, around £3.87 billion. *How can the HEFCE ensure that these funds are used for the intended purposes?* The HEFCE uses a number of methods to ensure that the funds it allocates are properly used. One of these is the Financial Memorandum²² for each university and college funded by the HEFCE. (See Appendix 3.) In this Financial Memorandum, the HEFCE exercises its powers to attach terms and conditions for receiving funding. Another method is the Audit Code of Practice where the HEFCE sets out its requirements for each

institution's internal and external audit arrangements and gives the broad framework in which they should operate. (See Appendix 4.) The HEFCE monitors institutions' finances regularly through regular financial returns and contact with its Finance Consultants and Advisors²³.

9.2.6 Funding Models

9.2.6.1 Funding for Teaching

The HEFCE has an annual funding agreement with each institution that sets out the student numbers—specified by subject area, level, and mode of delivery—institutions are required to deliver in return for the totality of the funding for teaching. (See Part 2 of the Financial Memorandum in Appendix 3). Monitoring of actual enrolled numbers is performed through the Council's annual Higher Education Students Early Statistics (HESES) survey. If the institution fails to recruit its contracted student numbers, the Council holds back a proportion of the funding for teaching. These student number data are verifiable against data subsequently collected by the Higher Education Statistics Agency.

9.2.6.2 Funding for Research

The policy of HEFCE for funding research is to allocate that funding selectively to those institutions that have demonstrated research quality. To do so, the HEFCE undertakes assessment of the quality of each institution's research output every four to five years. The Research Assessment exercise (RAE), is at the level of individual

subjects or subject groupings, known as units of assessment. Based largely on a subjective judgement of the quality of published research (or equivalent), it also takes into account, as subsidiary indicators, the number of postgraduate research students, funded research studentships, external research income, and statement of research plans.

Subjects are ranked on an ascending scale of 1-5: subjects awarded a ranking of 5 are judged to be of international standing. In the 1996 Research Assessment exercise (RAE), the point 3 on the scale was sub-divided into 3a and 3b, and starred Ss were awarded to 5-rated submissions the majority of whose work is of international excellence. Stars may also be given to submissions rated 1-4 when they contain research groups identified as having particular excellence in research above the overall rating for the submission²⁴. The 2001 exercise will be similar.

9.3 Conclusion

This chapter establishes that there are a variety of sources for funding English universities, the most important of which is the Higher Education Funding Council for England established by FHEA 1992. The HEFCE covers all English universities, institutions, and colleges and uses two models for funding the universities: funding for teaching and funding for research.

This chapter also discussed the responsibilities and memberships of HEFCE and explained the powers of the Secretary of

State in relation to funding universities. He can set forth conditions, which appear in the financial memorandum from HEFCE to the universities, the university government has the responsibility to follow. The governance of the universities in England is the major concern of next chapter.

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¹ Section 62 (1) (a) of FHEA 1992.

² Section 65 (2) (a) and (b) of FHEA 1992.

³ HEFCE home page: www.niss.ac.uk/education/hefc.

⁴ Ibid. Note 1, Section 62 (1) (b).

⁵ Schedule 1, para. 17, FHEA; Schedule 7, para. 15, FHESA.

⁶ D. J. Farrington, *The Law of Higher Education*, 1994, p. 112.

⁷ *R v. Higher Education Funding Council, ex parte Institute of Dental Surgery* (1994) 1 All ER 651.

⁸ Ibid. Note 1, Section 62 (4).

⁹ Paymaster-General, Hansard, H.L. vol. 533, col. 982.

¹⁰ Section 68 of FHEA.

¹¹ Loans are forgotten.

¹² Ibid. Note 1, Section 81.

¹³ Ibid. Note 1, Section 69 (5).

¹⁴ Ibid. Note 1, Section 72.

¹⁵ Ibid. Note 1, Section 82 (2).

¹⁶ Ibid. Note 1, Section 78.

¹⁷ Ibid. Note 1, Section 62 (2).

¹⁸ Ibid. Note 1, Section 68.

¹⁹ See Paymaster-General, Hansard, H.L. vol. 533. col. 1035; vol. 535, col. 95.

²⁰ See Lord Beloff, Hansard, H.L. vol. 535, col. 99 et seq.

²¹ Ibid. Note 1, Section 68 (4).

²² For more information, see D. J. Farrington, op. cit., pp. 108-111.

²³ HEFCE home page: www.niss.ac.uk/education/hefc.

²⁴ Ibid.

Chapter 10:

Governance of Universities in England

10.1 Introduction

The aim of this section is to describe the structure of governance for the pre-1992 and post-1992 universities in England to answer the following questions:

- *Who has the power to control university affairs?*
- *What are these powers?*
- *Who are the members of the governing bodies in the university?*
- *Who appoints the members of the governing bodies?*

It is good to mention the levels of rules in old and new universities in England. The hierarchy of rules in the old universities is generally similar to the following:

1. Charter – Privy Council
2. Statutes – Approved by Privy Council
3. Ordinances – University Council
4. Regulations – Council/Senate
5. Departmental/Faculty Conventions

In new universities, the instruments of government delegate similar powers.

10.2 The Pre-1992 Universities¹

10.2.1 The Court

10.2.1.1 Composition and Meetings

In the majority of the pre-1992 universities, the Court is defined as the supreme governing body, even though the charter and statutes of many of these universities place strict restrictions on its powers. In the charters of some of the universities established in the 1960s, the Court (also known as the Conference, Convocation, or General Convocation²) has more limited powers. However, in most cases whatever the formal ruling, the Court is, in practice, largely formal and does not take part in university affairs.

The Court is generally a large body. Although it can be extended in size from about 50 to more than 400, the typical size is approximately 200 with newer universities likely to have smaller Courts. Its constitution is specified in the university's statutes, typically including representatives of local authorities; Members of Parliament; representatives of other universities, colleges, schools, and the professions; members of the council; university officers; elected staff; student representatives; and alumni of the university.

In the University of Newcastle upon Tyne the Court consists of³ the Chancellor; the Vice-Chancellor; the Pro-Vice-Chancellors; the Chairman of the Council; the Vice-Chairman of the Council; the Treasurer (if such an officer is appointed); the Chairman of Convocation; the Dean of Medicine; the Deans of the Faculties; the Dean of Dentistry; eighteen members appointed by the Academic

Board, of whom twelve shall be elected from their own number by the professorial members of the board and six shall be elected from their own number by the non-professorial members of the board. Research associates, grade 1A, and demonstrators eligible for membership of the Academic Board by virtue of holding appointment of one or more years shall not be eligible to elect members or be elected to the membership of Court; one member appointed by the Newcastle and North Tyneside Authority; one member appointed by the Council of the University of Durham; two members appointed by the Council of the City of Newcastle upon Tyne; one member appointed by each of the following:

- The Council of the County of Northumberland
- The Council of the County of Cumbria
- The Council of the Borough of North Tyneside
- The Council of the Borough of South Tyneside
- The Council of the Borough of Gateshead
- The Council of the Borough of Sunderland

The Court also provides for public opinion; members of the Court can raise any matters of concern about the university. The Court in general is required by statute to meet at least once a year. However, in the University of Newcastle upon Tyne, it is required to meet at least twice during each academic year⁴.

(See Chapter 12 for the procedure for removing a member of the Court.)

10.2.1.2 Powers of the Court

The powers of the Court vary among universities and are subject to their charters and statutes; nevertheless, they typically include the following:

- Consideration of the annual report of the university
- Approving the annual accounts
- Approving amendments to the charter and statutes proposed by the Council, after consultation with the Senate, prior to submission to the Privy Council (with the exception of the University of Surrey)⁵.
- Appointing the Chancellor in most, but not all, cases.

In the University of Newcastle upon Tyne, the powers of the Court are as follows⁶:

- To exercise all the powers and authority of the university except to the extent to which the exercise of the same may be otherwise prescribed by the statutes
- To make regulations for the custody and use of the common seal of the university
- To make statutes subject to the provisions of Statute 68⁷
- To appoint six members of the Council

10.2.2 The Council

10.2.2.1 Powers of the Council

The Council is the executive governing body⁸ of the universities and subject to their charters and statutes. It is responsible for the

management of the university estate and for the university's finances, investment, and buildings. However, before determining any question of finance that effects academic policy, the Council must take into consideration any recommendation or report thereon by the Senate⁹. It has the authority to make contracts on behalf of the university and to enter into loans and mortgage agreements¹⁰. It also has the responsibility to determine any fees of the university, after considering any Senate recommendations¹¹. The Council has the power to authorise or control the establishment and disestablishment of Professorships, Readerships, Senior Lectureships, Lectureships, and other such posts required by the university and on the recommendation of the Senate to appoint persons thereto¹². The Council also has the power to authorise or control the establishment and disestablishment of academic, library, administrative, technical, secretarial, and all other university posts necessary to its proper functioning in accordance with the charter and statutes of the university, except offices specifically designated in such statutes¹³.

The Council and Senate jointly recommend to the Court persons for appointment as Chancellor and Pro-Chancellors¹⁴, but the Treasurer is only appointed by the Court according to the recommendation of the Council which determine his functions¹⁵. The Council has the power to appoint the Vice-Chancellor, the Pro-Vice-Chancellors, the University Secretary and Registrar, and the Librarian according to the statutes of the relevant university¹⁶. The Councils of such universities have the power to appoint and determine the

conditions of appointment for the academic staff upon Senate recommendation¹⁷. Moreover, the Council exercises the last disciplinary power over both staff and students¹⁸. In addition, the Councils of most universities have the powers to¹⁹:

- Make provision for schemes of insurance, superannuation, pensions, and retirement benefits for all paid staff of the university and their dependants.
- Appoint and determine the remuneration of the Auditor or Auditors.
- Appoint a Dean of Medicine and other Deans of Faculty after consultation with the Senate.
- Appoint the Professors.
- Designate, on the recommendation of the Senate, the departments whose heads shall be *ex-officio* members of the Senate.
- Appoint and determine the remuneration of external examiners on the recommendation of the Senate and with the approval of the Academic Advisory Committee (while that Committee exists).
- Approve persons to receive honorary degrees, the title of Professor emeritus, and other such academic distinctions on Senate nomination.
- Affiliate other bodies, or departments thereof, to the university on Senate recommendation and with the approval of the Academic Advisory Committee (while that

Committee exists)

- Admit members of affiliated bodies, or departments thereof, to any of the privileges of the university on Senate recommendation.
- Make, add to, amend, or repeal Ordinances in accordance with the charter.
- Appoint members of the Court as provided by statutes.
- Co-opt members of the Council as provided by statute.
- Institute fellowships, studentships, scholarships, exhibitions, bursaries, prizes, and other such grants for the encouragement of study and research on the recommendation of the Senate and subject to such conditions as the Council and the Senate shall think fit.
- Give on behalf of the university guarantees to building societies whether in pursuance of a continuing arrangement or not.
- Establish council appeal bodies that shall exercise functions in relation to the discipline of students assigned to them under the Ordinances referred to it by the statute.
- Establish Joint Committees of the Council and representatives of the Union of Students and prescribe the method of appointment of such representatives and the functions of such Committees.
- Exercise such powers as are or may be conferred upon it by the Charter, Statutes, Ordinances, and Regulations.

The Council will carry out many of its functions through committees. In particular, it will often have, jointly with the Senate²⁰, a resources or strategy committee responsible for planning the development of the university, bringing together academic priorities, considering finances, making regulations, formally approving honorary degrees, handling building needs, appointing external examiners, and supervising of the work of the Senate.

10.2.2.2 Composition and Meetings

It is an important ideal that the Council has a secular majority of members who are not staff or students of the university. The Council is not as big as the Court, ranging in size from 30 to over 50. Meeting between three and six times per year, its membership is specified in the statutes by group of appointment and typically includes

- Members appointed by the Court
- Members appointed by the Senate
- Officers of the university both secular and academic
- Co-opted members
- Local authority representatives
- Elected staff members and students representatives

In the University of Newcastle upon Tyne the Council consists of²¹

- The Vice-Chancellor
- The Pro-Vice-Chancellors
- The Treasurer (if such an officer is appointed)

- The Dean of Medicine
- Nine members appointed by the Senate, of whom six shall be elected from their own number by the professorial members of the Senate and three shall be elected from their own number by the non-professorial members of the Senate
- The full-time registered students of the University who are members of the Senate in accordance with Statute 25(1)(b), provided that the officers of the student organisations shall not receive papers or be concerned with discussions on appointments, promotions, and matters affecting the personal position of members of staff of the university or the admission and academic assessment of students, whether in general or in any particular case
- Not more than six members appointed by the Court, either from their own number or otherwise
- One member, being a full-time registered student, but not a student exempt from the requirement of attendance at classes by virtue of being an officer of a student organisation, provided that he shall not receive papers or be concerned with discussions on appointments promotions and matters affecting the personal position of members of staff of the university or the admission and academic assessment of students, whether in general or

in any particular case

The student member, not being an officer of a student organisation, shall be elected by the Union Society of the University of Newcastle upon Tyne at its last ordinary meeting in the Easter Term and shall hold office for one year, provided that if he ceases to be a registered full-time student he shall cease to be a member of the Council. The Council may, after consultation with the union society, co-opt a full-time registered student for the remainder of his period of office, together with such number of co-optative members chosen either from the members of the Court or otherwise, not being more than nine, as the Council shall from time to time determine.

None of the appointed members (other than those appointed by the Senate) and none of the co-optative members shall be full-time teachers or salaried officers in the university.

The members appointed by the Senate shall not be required to resign if, during their term of office, they cease to be members of the Senate. Appointed and co-optative members shall hold office for three years. (See Chapter 12 for the procedure for removing a member of council.)

10.2.2.3 The Chairman and Vice-Chairman of the Council

According to Statute 19 of the Statutes of the University of Newcastle 1963, the Council appoints from among its own members or otherwise a Chairman, not being a teacher or salaried officer in the University. If the Chairman is appointed from among the members of the Council, the Council may require him to vacate office if he ceases

to be a member of the Council. If the Chairman is appointed from outside the Council, he should cease to be a member of the Council if he ceases to be the Chairman. Subject thereto, the Chairman shall hold office for three years.

Also, the Council appoints, from among its own members or otherwise, a Vice-Chairman not being a teacher or salaried officer in the university. If the Vice-Chairman is appointed from among the members of the Council, the Council may require him to vacate office if he ceases to be a member of the Council. If the Vice-Chairman is appointed from outside the Council, he should cease to be a member of the Council if he ceases to be Vice-Chairman. The first Vice-Chairman holds office for two years. Subsequent Vice-Chairmen hold office for three years.

10.2.3 Senate

10.2.3.1 Powers of the Senate

The Senate is responsible for regulating and guiding the academic work of the university and must be subject to the university charter and statutes. In some cases, the statutes state that power in academic affairs (e.g., the awarding of degrees²²) rests with the Senate (a power that normally rests with the Council). But, even if the statutes do not make this explicit, the Senate in fact is regarded as the supreme authority on completely academic affairs.

Senate decisions on academic affairs that have financial or resource implications are subject to Council consent. However,

Council decisions that have academic implications (e.g., the creation or closure of an academic department) are subject to consultation with the Senate since the Senate would normally be the initiating body in such matters.

10.2.3.2 Powers of the Senate in the University of Newcastle upon Tyne

The Senate of the University of Newcastle upon Tyne is the supreme governing and executive body of all the academic matters and is subject to the powers reserved to the Court and the Council by university statutes. The Senate, however, must take such measures and act in such a manner as to promote the interests of the university as a place of education, learning, and research²³. For example, the powers of the Senate include the following²⁴:

1. To regulate and control, in accordance with procedures approved by it, all teaching, courses of study and examinations within the university, and the conditions qualifying for admission to the various titles, degrees, and other distinctions offered by the university
2. To act jointly with the Council to nominate the Vice-Chancellor for appointment by the Court
3. To recommend to the Council the appointment of all university academic and research staff, except where other provision is made in the statutes
4. To satisfy itself that the duties and conditions of service of all

academic staff members are satisfactory and make representation to the Council

5. To make recommendations to the Council concerning all university fees
6. To determine the dates when terms shall begin and end
7. To regulate the discipline of the university and to determine in what manner disciplinary powers shall be exercised
8. To regulate the use of academic dress in the university
9. To take such steps as it thinks proper for supervising organizations of students
10. To make recommendations to the Council on any matter of interest to the university
11. To discuss and declare an opinion on any academic matter.
12. To appoint university representatives on other bodies, except as otherwise provided
13. To exercise such powers as are or may be conferred upon it elsewhere in the statutes
14. To prescribe the requirements of the university for matriculation²⁵
15. To grant degrees and other academic distinctions to persons who shall have pursued in the university a course of study approved by the Senate and shall have passed the examinations of the university under the conditions laid down in the university regulations
16. To grant degrees, diplomas, certificates, and other academic

distinctions to persons who have pursued a course of study approved by the Senate, in this or another institution recognized for this purpose, and passed examinations under conditions approved by the Senate

17. To grant degrees and other qualifications jointly with other higher education institutions having the power to grant such qualifications to persons who have pursued a course of study and passed examinations under conditions laid down in regulations approved by the Senate

18. To grant honorary degrees, the title of Professor emeritus, or other university distinctions

19. To accept such examinations and periods of study at such universities and places of learning as the Senate may approve as equivalent to such examinations and periods of study in the university as the Senate may determine

20. To accept courses of study in any other institution, which in the opinion of the Senate possesses the means of affording the proper instruction for such courses as equivalent to such courses of study in the University as the Senate may determine

21. To determine what formalities shall attach to the conferment of degrees and other distinctions

10.2.3.3 The Composition

The Chair of the Senate is the Vice-Chancellor, and the Senate usually consists of

- Academic staff, with the corroboration of staff in the various grades (professional, non-professional, research, etc).
- Student representatives

Senates vary in size from under 50 to well over 100 members.

10.2.3.4 The Senate Composition at the University of Newcastle upon Tyne

In the University of Newcastle upon Tyne, the Senate consists of²⁶ ex-officio members

- The Vice-Chancellor
- The Pro-Vice-Chancellors
- The Dean of Medicine
- The Deans of the Faculties
- The Dean of Dentistry
- Up to two members appointed by Senate by virtue of their chairmanship of committees of the Senate with powers and duties relating to teaching and research matters

and appointed members

- One member appointed by each Board of Faculty (Any additional members appointed by each Faculty Board as determined by the Council, on the recommendation of the Senate, provided that not more than five members in total are appointed by any one faculty and that the total number of appointed members does not exceed twenty-six
- Fourteen members elected by and from the Professors,

Readers, and full-time Lecturers of the University and the holders of such other offices as the Senate may from time to time determine provided that only eight of those members are elected from the Professors and the holders of such offices as the Senate may from time to time specify as equivalent for the purpose of this section

- One full-time registered student not exempt from the class attendance requirement by virtue of being an officer of a student organisation, provided that he shall not receive papers or be concerned with discussions on appointments, promotions, and matters affecting the personal position of university staff members or the admission and academic assessment of students, whether in general or in any particular case.

The student member, not being an officer of a student organisation, shall be elected by the Union Society of the University of Newcastle upon Tyne at its last ordinary meeting of the Easter Term and shall hold office for one year, provided that if he ceases to be a registered full-time student he shall cease to be a member of the Senate. The Senate may, after consultation with the union society, co-opt a full-time registered student for the remainder of his period of office, together with, if the Senate so determines, not more than two members appointed by co-option.

The persons appointed at the annual election of officers of the students' union to the offices of president, deputy president and

secretary—provided that these persons are full-time registered students of the University and that the officers of the student organisation shall not receive papers or be concerned with discussions on appointments, promotions, and matters affecting the personal position of university staff members or the admission and academic assessment of students, whether in general or in any particular case—shall be members of the Senate for the year of office for which they were elected provided that they remain full-time registered students of the university. If any one of these persons ceases to be a full-time registered student of the university, he shall cease to be a member of the Senate; and for the remainder of his year of office, the Senate shall, after consultation with the union society, co-opt a full-time registered student.

10.2.4 The Academic Board of the University of Newcastle upon Tyne

This board consists of²⁷

- The Vice-Chancellor
- The Pro-Vice-Chancellors
- The University Professors, Readers, and Librarian
- All full-time Lecturers of the University
- The residence hall wardens
- The holders of other academic and administrative posts as designated by the Senate
- Such other teachers and research workers in the university as nominated by the Senate.

The Academic Board Chairman of the University of Newcastle upon Tyne is the Vice-Chancellor of the university²⁸. The main power of the Academic Board is to appoint eighteen members of the Court in accordance with the provisions of Statute 16 of the University of Newcastle upon Tyne statutes²⁹. However, the Academic Board may³⁰

- Discuss and declare an opinion on any matter whatsoever relating to the university including any matters referred to it by the Council or the Senate
- Enter into communication directly with the Council or the Senate on any matter affecting the University

The Vice-Chancellor may summon meetings of the Academic Board at any time at his discretion and shall also do so upon written request of not fewer than twenty-five Academic Board members stating the purpose for which the meeting is to be called³¹.

10.2.5 The Convocation of the University of Newcastle upon Tyne

In the University of Newcastle upon Tyne, there is a Convocation consisting of the Vice-Chancellor, the Pro-Vice-Chancellors, and all persons registered on or after the appointed day as members of Convocation³². The Registrar should keep a record of the Convocation members. Subject to the payment of such fees as may be prescribed by the Council, the following shall be entitled to be registered as Convocation members³³:

- All graduates of the University of Newcastle upon Tyne
- Those graduates of the University of Durham who were

during their courses registered students of the Newcastle Division of the University of Durham before the appointed day

- Those graduates of the University of Durham who were during their courses matriculated students at Sunderland Technical College
- The nine persons appointed to the Council by the Senate;
- Such other persons or classes of persons as the Court may from time to time decide, upon the recommendation of the Senate.

According to Statute 52 of the University of Newcastle upon Tyne statutes, the Convocation, from its own members, should elect a Chairman and may elect a Deputy Chairman who should respectively hold office for five years. Any retiring Chairman or Deputy Chairman should be eligible for re-election. Neither the Chairman nor the Deputy Chairman should be a teacher or salaried officer of the university. The Convocation should hold at least one ordinary meeting each year³⁴. However, an emergency Convocation meeting may be summoned at any time by the Vice-Chancellor³⁵; and the notice of meetings should be given by public notices in Newcastle and by such other means, including communication to the press, as the Vice-Chancellor may direct³⁶.

The quorum of Convocation for the despatch of business according to Statute 54 of the University of Newcastle upon Tyne statutes should be thirty members. If, after the expiration of half an

hour from the time for which a meeting is summoned, a quorum has not been formed the meeting should be dissolved.

According to Statute 55 of the University of Newcastle upon Tyne statutes the Convocation Chairman or, in the event of the office of Chairman being vacant, Deputy Chairman may summon an extraordinary meeting at any time at his discretion and should upon written request of not fewer than fifty Convocation members stating the purpose for which the meeting is to be called. The notice summoning the meeting should specify the business to be considered. No extraordinary meeting called upon the requisition of members for any purpose should be held before the expiration of three months from the date of the last foregoing meeting summoned for the same, or substantially the same, purpose. If any question arises whether the purpose of the two meetings is or is not the same or substantially the same, the decision of the Chairman or Deputy Chairman (as the case may be) of Convocation should be final.

The Convocation should appoint a Chancellor upon the nomination of the Court and the Senate sitting in joint session³⁷. In addition, the Convocation may discuss and, if it thinks fit, make representations on any matter whatsoever relating to the university³⁸. The vote in all questions in Convocation is by majority of the members present and voting³⁹.

10.2.6 The University Officers

In pre-1992 universities, the statutes provide for a number of

university officers.

10.2.6.1 Chancellor

The Chancellor is formally the secular Head of the University and the Chairman of the Court. The role is largely formal, for example, the Chancellor presides at the degree congregation. Statute 6 of the Statutes of the University of Newcastle 1963 state

(1) There shall be a Chancellor of the University, who shall, subject as in these statutes provided, hold office during his life or until his resignation.

The first Chancellor shall be The Most Noble Hugh Algernon Duke of Northumberland, KG.

(2) The Chancellor shall be the Head of the University and shall by virtue of his office be a member of the Court, and shall preside at all meetings of the Court at which he is present.

(3) During a vacancy in the office of Chancellor, or during his inability through illness or any other cause to perform his duties, the duties of that office shall be performed by the Vice-Chancellor.

(4) The successors to the first Chancellor shall be appointed by Convocation on the nomination of the Court and the Senate sitting in joint session.

However, there is no mention in the University of Newcastle upon Tyne statutes for the procedure to be followed if the Chancellor resigns. However, there is a procedure to remove him from his office:

On the recommendation of the Council, the Court, by a majority of two-thirds of its members present and voting, represent to the Visitor that the University Chancellor should be removed, so the Visitor may remove the Chancellor. Thus, the removal of the Chancellor is in the University Visitor's; but it is not compulsory.

This contrasts with the University of Surrey statutes, which establish that the Court, on the recommendation of the Council and the Senate acting jointly, may remove the Chancellor. Before making such a recommendation, the Council and the Senate must consider a report of a Joint Committee of eleven persons of whom five must be appointed by the Council and members of the Council and not the Senate and five must be members of the Senate appointed by the Senate; the Chairman must be an elected member of the Council appointed by the Council⁴⁰. The University of Surrey Chancellor may resign in writing addressed to the Clerk of the Court⁴¹.

10.2.6.2 The Pro-Chancellor

The Pro-Chancellor (or one of the Pro-Chancellors if there are more than one) is normally the Chairman of the Council. The Council from among its secular members elects him to the post. In the University of Newcastle upon Tyne, there is no Pro-Chancellor. In comparison, the University of Surrey statutes establish that the Court on the recommendation of the Council and the Senate acting jointly, must appoint and may remove one or more Pro-Chancellors. Before making such recommendation, the Council and Senate must consider a report from a Joint Committee constituted in the manner described

previously⁴². Thus, in the University of Surrey, more than one Pro-Chancellor must hold office until the end of the third year following his appointment or until such earlier date as the Court on the recommendation of the Council and Senate may determine and must be eligible for reappointment by the Court on the recommendation of the Council and Senate⁴³.

In the situation of more than one Pro-Chancellor, the Pro-Chancellor who has been in office as such for the longest period or aggregate of periods (whether consecutive or not) must be the Pro-Chancellor. This Pro-Chancellor must perform the functions of the Chancellor during vacancy in his office or during his inability, through illness or any other cause, to perform his functions. If the Pro-Chancellor were to be unable through illness or other cause to perform those functions, the next senior Pro-Chancellor not so incapacitated must so act⁴⁴. Any Pro-Chancellor of the University of Surrey may resign in writing addressed to the Clerk of the Court⁴⁵.

10.2.6.3 The Treasurer

The Treasurer is also elected by the Council from among its secular members and is normally Chairman of the University's Finance Committee. In the University of Newcastle upon Tyne, the Council appointed Treasurer must, in an honorary capacity, perform such duties and hold office for such period as determined by the Council⁴⁶.

In comparison with the University of Surrey statutes, the Treasurer is appointed and may be removed by the Court on

recommendation of the Council⁴⁷. He must hold office until the end of the third year following his appointment or until such earlier date as may be determined by the Court on the recommendation of the Council and must be eligible for reappointment for one or more further periods each not exceeding three years and determined by the Court as aforesaid⁴⁸. However, he may resign in writing addressed to the Clerk of the Court⁴⁹.

10.2.6.4 Vice-Chancellor

The statutes of many pre-1992 universities define Vice-Chancellors as the chief academic and administrative officers of the universities. The Vice-Chancellor has overall responsibility for the executive management of the institution and for its day-to-day direction and is accountable to the Council (or at the University of Newcastle upon Tyne to the Court) for the exercise of these responsibilities. The Vice-Chancellor is designated the Principal Officer of the Institution.

10.2.6.4.1 Duties and Responsibilities

According to Statute 7 of the Statutes of the University of Newcastle upon Tyne 1963, the university Vice-Chancellor must be the chief academic and administrative officer and must have a general responsibility to the Court, the Council, and the Senate for maintaining and promoting its efficiency and good order. However, in the University of Surrey⁵⁰, the Vice-Chancellor is responsible to the Council after consideration of a report of a Joint Committee (constituted in the manner prescribed in the position of Chancellor

.above).

10.2.6.4.2 Appointment

Upon the nomination of the Council and Senate acting jointly, the Court must appoint the successors to the first Vice-Chancellor⁵¹. However, at the University of Surrey⁵², the Council appoints the Vice-Chancellor after consideration of a report of Joint Committee (constituted in the manner prescribed in the position of Chancellor above).

The Vice-Chancellor in the University of Newcastle upon Tyne also must be a member of the Court, the Council, the Senate, the Academic Board, the Convocation, and each Board of Faculty by virtue of his office⁵³. In addition, the Vice-Chancellor must preside at all Senate meetings⁵⁴.

10.2.6.4.3 Vacancy in the Office of Vice-Chancellor

During a vacancy in the office of Vice-Chancellor, or during his inability through illness or any other cause to perform his duties, the duties of that office must be performed by the senior Pro-Vice-Chancellor or the next-senior Pro-Vice-Chancellor if the senior Pro-Vice-Chancellor unable due to illness or other cause⁵⁵. Removing of the Vice-Chancellor on ground of good cause is considered in detail in Chapter 12.

10.2.6.5 Pro-Vice-Chancellors

Pro-Vice-Chancellors are appointed by the Council after consultation with the Senate for a fixed period of time normally from amongst the Professors. The Pro-Vice-Chancellor assists the Vice-

Chancellor but normally continues to carry out some academic duties within his department.

10.2.6.5.1 Appointment

The Council appoints the Pro-Vice-Chancellor after consultation with the Senate. The Pro-Vice-Chancellor must act as Deputy to the Vice-Chancellor and hold office for such period, not exceeding five years, as the Council shall on the occasion of each appointment determine. In addition, he must be a member of the Court, the Council, the Senate, the Academic Board, the Convocation, and each Board of Faculty by virtue of his office⁵⁶.

The Council must appoint one or more additional Pro-Vice-Chancellors if the Senate so recommends and nominates. They hold office for periods fixed by the Council on the proposal of the Senate, and must, subject to the provisions of these statutes, perform such duties as the Senate may determine. Pro-Vice-Chancellors must, by virtue of their office, be members of the Court, the Council, the Senate, the Convocation, and such Boards of Faculties as the Senate may determine⁵⁷.

In the University of Surrey, the Pro-Vice-Chancellors must be appointed by the Council after consideration of a report of a Joint Committee (constituted as prescribed in the position of Chancellor above).

10.2.6.6 Registrar

The Registrar is the most senior member of the administrative staff and is normally designated in the statutes as Secretary or Clerk

to the Council, the Senate, and other statutory bodies. The Registrar is responsible to the Vice-Chancellor for his administrative responsibilities. In some universities, all administrative officers (e.g., the Bursar, Finance Officer, Estates Officer, and Academic Registrar, report to the Registrar). In others, however, some of these officers report directly to the Vice-Chancellor.

10.2.6.6.1 Appointment

The Council appoints the Registrar. Before making such appointment, the Council should constitute a committee that includes members of the Senate to make recommendations as to the appointment; and the Council should consider that committee's report⁵⁸.

The Registrar of the University of Newcastle upon Tyne is under the supervision of the Vice-Chancellor, and he must perform such duties as the Council may prescribe after consultation with the Senate⁵⁹. In the University of Surrey, the Registrar is appointed by the Council after consideration of a Joint Committee report.

10.2.6.7 The Auditor

The Council is responsible to appoint an Auditor or Auditors. Every such Auditor should be a member of a recognised supervisory body established in the United Kingdom (e.g., the Institute of Chartered Accountants in England and Wales) or a body recognised in accordance with the provisions of Part II of the Companies Act 1989, or any statutory modification, consolidation, or re-enactment for the time being in force⁶⁰. No person should be appointed or remain an

Auditor who is or any of whose partners is a member of the Court, Council, or university staff⁶¹.

The Statutes of the University of Newcastle upon Tyne, however, stipulate just that he should not be a member of any of the statutory bodies of the university. Accordingly, the partners of a member of a statutory body of the University of Newcastle upon Tyne could be appointed an Auditor. At the University of Surrey, the Auditor or Auditors hold(s) office for such period as the Council thinks fit⁶²; but in the University of Newcastle upon Tyne, the Auditor should hold office for one year⁶³, and for three years at the University of Sheffield⁶⁴. The Auditor, however, should be eligible for reappointment and shall receive such remuneration as may be determined by the Council in the Universities of Newcastle, Surrey, and Sheffield⁶⁵.

The Auditor should have a right of access at all reasonable times to the university books, records, accounts, and vouchers and should be entitled to require from the university officers, staff, and any constituent body such information and explanations as he considers necessary for the performance of his duties⁶⁶. The Auditor, however, should report to the Council at least once each year⁶⁷. Such rights have not been adopted in the Statutes of the University of Newcastle upon Tyne nor the University of Sheffield.

If the office of Auditor is vacated by death, resignation, or any other cause before the expiration of the period of office, the Council should forthwith appoint a replacement Auditor for the remainder of the period⁶⁸. Such provisions have not been adopted in the Statutes of

the University of Newcastle upon Tyne nor the University of Sheffield.

The Auditor may resign in writing to the Clerk of the Council⁶⁹. Such provision has not been adopted in the Statutes of the University of Newcastle upon Tyne nor the University of Sheffield.

10.2.6.8 Faculties

Not all universities are organised on a faculty basis. This was the structure introduced in the early civic universities and applies to most of the older universities. Other models that serve a similar purpose group related subjects into schools.

In the University of Newcastle upon Tyne the word *faculty* means any branch or aggregate of branches of study in which the university confers degrees. The Senate may define the scope of any faculty⁷⁰.

According to Statute 40 of the Statutes of the University of Newcastle 1963, there must be a Faculty of Medicine and such other faculties in the university as the Council, upon Senate recommendation, determines. However, the existing faculties are

- Medicine
- Arts
- Science
- Engineering
- Law, Environment, and Social Sciences
- Education
- Agriculture and Biological Sciences

10.2.6.9 The Boards of Faculties

According to Statute 41 of the Statutes of the University of Newcastle 1963, there must be a board for each university faculty. However, every Faculty Board has its own constitution determined by the Council upon the recommendation of the Senate. Upon this recommendation, the Council has the right to determine that each Faculty Board consists of the following⁷¹:

1. The Vice-Chancellor, the Pro-Vice-Chancellors, and those members of the Academic Board who are teachers and research workers in the faculty on the Lecturer or equivalent salary level and above.
2. Such other teachers and research workers in subjects outside the faculty as the Faculty Board determines with regard to the importance of that subject to students in the faculty.
3. So many additional persons as determined and appointed by the Faculty Board. (Membership in this category shall be confined to individuals who are not teachers or salaried officers of the University.)
4. Research associates, grade 1 A, and demonstrators eligible for Academic Board membership by virtue of holding appointments of one or more years are not eligible for membership of Faculty Boards unless the Faculty Board so determines. Such additional members shall not be at liberty to vote on matters before the board or participate in elections

conducted under board procedures.

10.2.6.10 Deans of Faculties

The University of Newcastle upon Tyne statutes distinguish between the Dean of Medicine and the other Deans. According to Statute 43 of the Statutes of the University of Newcastle 1963, the Dean of each Faculty other than medicine must be the Chairman of the Faculty Board and must be a full-time salaried teacher or research worker in the faculty. The Faculty Dean is appointed by the Council, after consultation with the Senate, for a period determined by the Council not exceeding five years. However, the Dean of Medicine must be registered as a medical practitioner and be appointed by the Council, after consultation with the Senate, for a period determined by the Council not exceeding five years. The Dean of Medicine is an *ex-officio* member of the Court, the Council, and the Senate and Chairman of the Board of the Faculty of Medicine. He is responsible—under the authority of the Council, Senate, and Vice-Chancellor—for guiding the organisation and development of university medical education and research and for maintaining close relations between the university and associated hospitals⁷².

According to Statute 8 at the University of Surrey, the Academic Deans are appointed by the Council upon Senate nomination with the approval of the Vice-Chancellor. The Academic Deans are responsible to the Vice-Chancellor for the proper performance of such functions and hold office for such period and upon such reappointment conditions as prescribed under the authority of the Ordinances⁷³.

102.6.10.1 Powers of the Boards of Faculties

Statute 43 of the Statutes of the University of Newcastle 1963, state,

Each Board of Faculty shall have the following powers and duties:

1. To consider, and report to Senate on such matters of academic policy or principle relating to the faculty as shall be determined by Senate.
2. To serve as a forum for the discussion of University policy affecting the faculty.
3. To discuss and make representations to Senate on any academic matter relating to the faculty.
4. To deal with any matter which may be referred to it by the Senate.

In addition to the above powers, the Board of the Faculty of Medicine must recommend to the Senate for appointment by the Council, either on a full-time or part-time basis, clinical teachers from among the medical and dental practitioners employed in the associated hospitals⁷⁴.

10.2.6.11 The Heads of Department or Schools

The Statutes of the University of Newcastle upon Tyne do not mention to the procedures for appointment, removal, responsibilities, and duties of Department or School Heads. Such procedures could be found in the Ordinance of the University Council; however, the University of Surrey's procedures for appointment, removal,

responsibilities, and duties of Department or School Heads has been confirmed by Statute 10A and by Ordinance on July 15, 1997⁷⁵ as explained below.

10.2.6.11.1 Appointment

The Vice-Chancellor appoints the Head of School, subject to ratification by the Council⁷⁶. The Head of School holds office for a fixed term⁷⁷ determined by the Vice-Chancellor at the time of appointment. At the end of the period, the Vice-Chancellor may renew a Head of School's appointment for another fixed term or terms subject to ratification by the University Council⁷⁸.

The Head of School is the Chair of the School's Academic Board and the School Policy and Strategy Committee and an *ex-officio* member of the University Senate and Court⁷⁹.

The following general procedures apply in relation to internal review of the appointments of heads of schools at the University of Surrey⁸⁰:

- (a). An official announcement is made of an impending vacancy in the headship of a school in the Gazette section of *Surrey Matters*.
- (b). The Vice-Chancellor consults with members of the school concerned and with the incumbent Head of School and also with the Pro-Vice-Chancellors and other senior staff as appropriate.
- (c). Members of the school and others are free to submit views and suggestions to the Vice-Chancellor in relation to the

appointment of the Head of School.

10.2.6.11.2 Responsibilities

According to Term 4 of the July 15, 1997 Ordinance⁸¹, the duties and responsibilities of the Head of School are discharged in accordance with the university Charter, Statutes, Ordinances, and Regulations. The Head of School is accountable to the Vice-Chancellor for the academic standards of the school, for the delivery and quality of the teaching programmes, and for the progression of all research. His powers for the management and development the school on behalf of the university are delegated by the Vice-Chancellor. The Head of School, however, holds executive responsibility for the management and leadership of his school and, in particular, for the academic standing and financial well being of the school⁸². Therefore, the Head of School is required to submit a rolling five-year plan and an annual plan for the school to the Vice-Chancellor. This will lead the Head of School to manage his school within the parameters of the annual plan, subject to any subsequent variations approved by the Vice-Chancellor. To this end, the Head of School may organise the school into relevant academic groupings for academic and administrative purposes, subject to the approval of the Vice-Chancellor. These groupings may be designated as *Centres, Groups, or Departments* depending on their size, role, and function. Still, if the Head of School wishes to create any other groupings or entities, the Vice-Chancellor must provide specific approval. The Heads of such Centres, Groups, or Departments are appointed by the Head of School with the approval of

the Vice-Chancellor. In addition, as he sees fit, he can delegate authority to act on any matter that falls within his responsibilities to the Head of any Appropriate Centre, Group, or Department or Deputy Head of School. Moreover, he may delegate authority as he sees fit for particular areas of school-wide responsibility (i.e., teaching, research, administrative support, or other relevant area) to specified individuals. Where authority is delegated, the Head of School will produce appropriate terms of reference; but such delegation in no way relieves the Head of School from the responsibility to ensure that activity within these organisations is carried out effectively.

In managing the school, the head is chair of and supported by a School Policy and Strategy Committee, if such exists. Key policy and strategy decisions affecting the school should be taken with the advice of such a Committee. However, the Head of School determines the composition of this Committee. Moreover, he is responsible for establishing clear priorities for all activity within the school and must take into account the advice of this Committee.

10.2.6.11.3 Financial Responsibilities

The financial budget and responsibility for the school's financial management is delegated by the Vice-Chancellor to the Head of School. In such matters, the Head of School may delegate authority to a subsidiary budget holder. Where this authority is delegated, the Head of School still retains accountability for the performance of this budget. Individual budgets delegated to Centres, Groups, or Departments are consolidated into a school budget for the purposes of

planning and reporting to a planning and resources committee.

10.3 The Post-1992 Universities

10.3.1 Introduction

Under subsection 121 and 122 of ERA 1988, the polytechnic and higher education colleges were transferred from the control of local education authorities and constituted as independent higher education corporations. Section 77 of FHEA 1992 allowed the polytechnic and higher education colleges to adopt the title *university*. These *higher education corporations* are governed by an instrument of government established under Schedule 7 of ERA 1988. They were to create their own articles of government with the approval of the Secretary of State under Section 125 of ERA 1988. Still, the Secretary of State had the right to change these articles of government via Section 125 (5) and (6) of ERA 1988. However, Section 124 A, added to ERA 1988 by FHEA 1992, transferred the powers to approve or create instruments of government for higher education institutions from the Secretary of State to the Privy Council starting on the appointed date ordered by the Secretary of State⁸³. However, different days may be appointed for different provisions and for different purposes.

In the new Section 124 A of ERA 1988⁸⁴, the powers of the Privy Council are specified as to the approval and creation of instruments of government for higher education corporations. Thus, the post-1992 universities or *higher education corporations* are governed by an instrument approved or made by the Privy Council.

In the following points, the University of Northumbria provides an example of the post-1992 universities, with its instrument and articles of government approved by the Privy Council in 1993 and 1995 respectively. The Articles of Government of the University of Northumbria at Newcastle Higher Education Corporation were formally adopted by the University's Board of Governors on March 11, 1996.

10.3.2 Board of Governors

The Board of Governors is charged with formal powers equivalent to a combination of the Court and the Council of a chartered institution. In the following points, I will describe the responsibility and composition of the Board of Governors of University of Northumbria.

10.3.2.1 Responsibilities

The Board of Governors must be responsible for⁸⁵

- The determination of the educational character and mission of the university and for oversight of its activities
- The effective and efficient use of resources, the solvency of the university and the corporation, and for safeguarding their assets
- The approval of annual estimates of income and expenditure
- The appointment, assignment, grading, appraisal, suspension, dismissal, and determination of the pay and

conditions of service of the holders of senior posts

- The setting of a framework for the pay and conditions of service of all other staff

10.3.2.2 Composition

According to Article 4 of the Instrument of Governors of the University of Northumbria 1993, the membership of the Board of Governors is as follows:

1. The Board of Governors must consist of⁸⁶:
 - Not less than twelve and not more than twenty-four members appointed in accordance with the following provisions
 - The Vice-Chancellor, unless he chooses not to be a member
2. Of the appointed members:
 - Up to thirteen shall be independent members
 - Up to two may be teachers at the university nominated by the Academic Board and up to two may be students of the university nominated by the students thereof
 - At least one and not more than nine shall be co-opted members nominated by the members of the Board of Governors who are not co-opted members
3. Independent members shall be persons appearing to the appointing authority to have experience and shown capacity in industrial, commercial, or employment matters or the practice of any profession.

4. The co-opted member(s) required in 2 (c) above should have experience in the provision of education.
5. A person (other than one appointed in 2 [b] above) who is
 - Employed at the university (whether or not as a teacher)
 - A full-time student at the university
 - An elected member of any local authority, is not eligible for appointment as a member of the Board of Governors as other than a co-opted member
6. A person who is not for the time being enrolled as a student at the university shall be treated as such a student during any period when he has been granted leave of absence from the university for the purpose of study or travel or for carrying out the duties of any office held by him in the students' union at the university.
7. It shall be for the appointing authority to determine any question as to whether any person is qualified in accordance with the preceding provisions of this paragraph for appointment as a member of the Board of Governors of any description or category.

Subject to the above maximums and minimums, the Board of Governors itself can determine the number of members in each category, ensuring that at least half the board members are independent⁸⁷. Thus, the above provisions clearly distinguish the higher education corporations from the chartered universities since most chartered universities give *ex-officio* membership to local

authority representatives. Also in higher education corporations, the majority of the Board of Governors is made up of laypersons; this is usually true of Council in old universities. This is secured by the Secretary of State who has reserve power under paragraph 8 of Schedule 7 of ERA 1988 to ensure this. However, this does not apply to old universities.

10.3.2.3 Appointment

The Board of Governors is the appointing authority in relation to the appointment of any member of the Board of Governors other than an independent member⁸⁸. In addition, the Board of Governors must be the appointing authority where an appointment of an additional independent member of the Board of Governors falls to be made in consequence of a determination of the membership numbers of the Board of Governors⁸⁹. It is also clear that the Board of Governors has the power to appoint the successor of an independent member of the Board of Governors where a vacancy in his office arises on the death of any such member or any such member ceasing to hold office in accordance with the instrument⁹⁰.

It is noteworthy that the Board of Governors has no right to appoint a new independent member of the Board of Governors unless the current independent members of the Board of Governors have approved the appointment⁹¹. Yet, if the number of independent Board of Governors members falls below that needed in accordance with the articles of the government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those

independent members required for a quorum⁹².

10.3.2.4 Removal of a Board Member

The instruments of government make provision for the removal of Board of Governors members who are either absent from its meetings for a period of twelve months or who are unable or unfit to discharge the functions of member. The Board of Governors informs the member of the removal in writing⁹³. Where most charters make provision for the removal of individuals for “good cause”, it is not usual to find provision in charters for members to be removed for failing to attend meetings⁹⁴.

In addition, the instruments of government normally make provision for the payment of financial loss allowances and travelling expenses to members of the Board of Governors of a higher education corporation⁹⁵.

10.3.3 Academic Board

The Academic Board established under articles of government, consists mainly of academic staff and is concerned with the planning and oversight of the academic work of the institution. Thus, it is equivalent to the Senate of pre-1992 universities⁹⁶. However, some old universities have Academic Boards that are merely advisory meetings of university academic staff and administration with some power to make appointments to other university bodies⁹⁷.

10.3.3.1 Responsibilities

The University of Northumbria’s Academic Board is responsible

for⁹⁸

1. General issues relating to the research, scholarship, teaching, and courses at the university, including criteria for the admissions of students; the appointment and removal of internal and external examiners; policies and procedures for assessment and examination of the academic performance of students; the content of the curriculum; academic standards and the validation and review of courses; the procedures for the award of qualifications and honorary academic titles; and the procedures for the expulsion of students for academic reasons (Such responsibilities shall be subject to such requirements of validating and accrediting bodies as may be applicable.)
2. Considering the development of the academic activities of the University and the resources needed to support them and for advising the Principal and the Board of Governors thereon
3. Advising on such other matters as the Board of Governors or the Principal may refer to the Academic Board

10.3.3.2 Composition

The Academic Board of the University of Northumbria has no more than forty members, comprising the Principal (who shall be Chairman) and other staff and students approved by the Board of Governors. The Principal may nominate a Deputy Chairman from among the members of the Academic Board to take the chair in his place. The period of appointment of members and the selection or

election arrangements must be subject to the approval of the Board of Governors⁹⁹.

Table 3: The Academic Board of the University of Northumbria¹⁰⁰

Vice-Chancellor (Chairman)	1
Pro-Vice-Chancellors/ Deans/Heads of Department and Academic Services	20
Teaching Staff	10
Staff other than Teaching Staff	3
Students	3
Co-opted	3
Total	40

10.3.4 Officers for Post-1992 Universities

The articles of government of the post-1992 universities make provision for each institution to designate and appoint to senior posts, which must include those of the Principal and the Clerk of the Board of Governors. These appointments must be made by the Board of Governors.

10.3.4.1 Chancellor

Some of the post-1992 universities have appointed Chancellors who carry out ceremonial functions, for example, conferring degrees at

degree congregations. Thus, he has the same function as in pre-1992 universities.

10.3.4.2 Chairman

According to ERA 1988 Schedules 7-12, the Chairman of the Board of Governors is normally an independent member and elected by the Board of Governors from among its members.

10.3.4.3 The Head of the Institution

Subject to the responsibilities of the Board of Governors, the head of the institution is the chief executive (the Principal) of the institution and is responsible for¹⁰¹

1. Making proposals to the Board of Governors about their educational character and mission of the institution and for implementing the decisions of the Board of Governors
2. Organising, directing, and managing the institution and leadership of the staff
3. Appointing, assigning, grading, appraising, suspending, dismissing, and determining—within the framework set by the Board of Governors—the pay and conditions of service of staff other than the holders of senior posts
4. Determining, after consultation with the Academic Board, the institution's academic activities and its other activities
5. Preparing annual estimates of income and expenditure for consideration by the Board of Governors and for the management of budget and resources within the estimates approved by the Board of Governors

6. Maintaining student discipline and, with the rules and procedures provided for within the articles, suspending or expelling students on disciplinary grounds and implementing decisions to expel students for academic reasons.

10.3.4.4 Pro-Vice-Chancellor

The Pro-Vice-Chancellor(s) assists the Vice-Chancellor and has specific management responsibilities. In some institutions they are appointed on a permanent basis and in others for a fixed term. They may be responsible for providing leadership in academic or related function.

10.3.4.5 Secretary (or Clerk) to the Board of Governors

The Secretary or Clerk to the Board of Governors normally has a management responsibility with the institution. Some are designated as Secretary or Registrar, and others are designated as a Deputy or Pro-Vice-Chancellor.

10.4 Conclusion

In light of this chapter, it could be concluded that university governments differ according to their foundation although in each case there is a balance between lay and professional members and between ex-office and elected appointments. Unlike in Saudi Arabia, there are no direct governmental appointments to governing bodies apart from the reserve powers of the Secretary of State in the case of new universities. The administration of universities established before 1992 consists of

- The Court is defined as the supreme governing body. However, its role, in practice, is formal; and it does not take part in the daily administrative affairs of the universities.
- The Council is the executive governing body of the university. Among its most important responsibilities are the finances, investment, and management of the university.
- The Senate is responsible for regulating and directing the academic work of the university.

The pre-1992 university officers are the Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Treasurer, Registrar, and Auditor. The Board of Faculties, Deans, and Heads of Departments or Schools administrate the faculties.

The administration of universities established after 1992 consists of

- The Board of Governors has to some extent the same powers as the Council in the pre-1992 universities.
- The Academic Board is similarly responsible for the academic affairs as the Senate in the pre-1992 universities.

The officers of the post-1992 universities are the Chancellor, Chairman of the Board of Governors, Head of the Institution, Pro-Vice-Chancellor, and Secretary or Clerk of the Board of Governors.

The academic staff members of English universities and their

relationships with the university are considered in detail in the following chapter.

Notes – Chapter 10

¹ The following section does not consider the particular structures of governance for the Universities of Oxford and Cambridge nor the federal governance of the University of London.

² These are different names for the “Supreme Governing body”.

³ Statute 16 (1) of the Statutes of the University of Newcastle upon Tyne.

⁴ Ibid. Statute 17 (3).

⁵ Statute 16 (26) of the Statutes of the University of Surrey and Article 22 of its Charter.

⁶ Ibid. Note 3, Statute 17 (1).

⁷ Statute 68 of the Statutes of the University of Newcastle upon Tyne state
The Court may, on the recommendation of the Council, make statutes altering, amending, adding to or repealing any of these statutes (except this statute), but no such statute shall be operative until allowed by Her Majesty in Council. No such statute shall be submitted to Her Majesty in Council unless it has been communicated to Convocation and the Academic Board and any representations made by those bodies or either of them have been taken into account by the Senate and the Council. Before taking any recommendation to the Court under this statute, the Council shall consult the Senate and shall convey the views of the Senate to the Court.

Notwithstanding anything contained in the Statutory Instruments Act, 1946, the provisions of that Act shall not apply to an Order in Council or other document allowing a statute made under this statute.

⁸ Section 131 (10) of ERA 1988 states, “In this section ‘governing body’ means, in relation to a university, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs.”

⁹ Ibid. Note 5, Statute 16 (3).

¹⁰Op. cit. Note 5, Statute 16 (7 & 8). See also, D. J. Farrington, *The Law of Higher Education*, 1994, p. 169.

¹¹ Op. cit. Note 5, Statute 16 (11). See also Statute 22 (5) of the Statutes of the University of Newcastle upon Tyne.

¹² Op. cit. Note 5, Statute 16 (13).

¹³ Op. cit. Note 5, Statute 16 (14).

¹⁴ Op. cit. Note 5, Statute 16 (15).

¹⁵ Op. cit. Note 5, Statute 16 (16).

¹⁶ Op. cit. Note 5, Statute 16 (17). See also Statute 22 (6, 7, 11 & 13) of the Statutes of the University of Newcastle upon Tyne.

¹⁷ Op. cit. Note 5, Statute 16 (18 & 19). See also Statute 22 (10 & 12) of the Statutes of the University of Newcastle upon Tyne.

¹⁸D. J. Farrington, op. cit., p. 169.

¹⁹ Op. cit. Note 5, Statute 16. See also Statute 22 of the Statutes of the University of Newcastle upon Tyne.

²⁰ Committee of University Chairmen, *Guide for Members for Governing Bodies of Universities and Colleges in England and Wales*, June 1995, p. 11.

²¹ Op. cit. Note 3, Statute 18.

²² There is some confusion when the Senate has the power to *award degrees* but the chancellor has the right to *confer the degrees*. It is clear that the chancellor can only confer what the Senate has awarded.

²³ Op. cit. Note 3, Statute 26.

²⁴ Op. cit. Note 3, Statute 27, 28, & 29.

²⁵ Op. cit. Note 3, Statute 28.

²⁶ Op. cit. Note 3, Statute 25.

²⁷ Op. cit. Note 3, Statute 33.

²⁸ Op. cit. Note 3, Statute 34.

²⁹ Op. cit. Note 3, Statutes 35 & 16.

³⁰ Op. cit. Note 3, Statute 36. See also Statute 20 of the Statutes of the University of

Surrey.

³¹ Op. cit. Note 3, Statute 37.

³² Op. cit. Note 3, Statute 50.

³³ Op. cit. Note 3, Statute 51.

³⁴ Op. cit. Note 3, Statute 53 (1).

³⁵ Op. cit. Note 3, Statute 53 (2).

³⁶ Op. cit. Note 3, Statute 53 (3).

³⁷ Op. cit. Note 3, Statute 56.

³⁸ Op. cit. Note 3, Statute 57.

³⁹ Op. cit. Note 3, Statute 58.

⁴⁰ Statute 3 (1) of the Statutes of the University of Surrey.

⁴¹ Ibid. Statute 3 (3).

⁴² Ibid. Statute 4 (1).

⁴³ Ibid. Statute 4 (2).

⁴⁴ Ibid. Statute 4 (3).

⁴⁵ Ibid. Statute 4 (4).

⁴⁶ Op. cit. Note 3, Statute 14.

⁴⁷ Op. cit. Note 5, Statute 6 (1).

⁴⁸ Op. cit. Note 5, Statute 6 (2).

⁴⁹ Op. cit. Note 5, Statute 6 (3).

⁵⁰ Op. cit. Note 5, Statute 5 (4).

⁵¹ Op. cit. Note 3, Statute 8.

⁵² Op. cit. Note 3, Statute 5 (4).

⁵³ Op. cit. Note 3, Statute 9.

⁵⁴ Op. cit. Note 3, Statute 10/1.

⁵⁵ Op. cit. Note 3, Statute 10/2.

⁵⁶ Op. cit. Note 3, Statute 11/1.

⁵⁷ Op. cit. Note 3, Statute 11/2.

⁵⁸ Op. cit. Note 3, Statute 13.

⁵⁹ Op. cit. Note 3, Statute 12.

⁶⁰ Op. cit. Note 5, Statute 11 (1). See also Statute 15 (1) of the Statutes of the University of Newcastle upon Tyne. See also Section 9, Statute 1 of the Statutes of the University of Sheffield.

⁶¹ Ibid. except Newcastle University.

⁶² Op. cit. Note 5, Statute 11 (2).

⁶³ Op. cit. Note 3, Statute 15 (2).

⁶⁴ Section 9, Statute (2) of the Statutes of the University of Sheffield.

⁶⁵ Ibid.; see also Statute 15 (2) of the Statutes of the University of Newcastle upon Tyne and Statute 11 (2) of the Statutes of the University of Surrey.

⁶⁶ Op. cit. Note 5, Statute 11 (3).

⁶⁷ Op. cit. Note 5, Statute 11 (5).

⁶⁸ Op. cit. Note 5, Statute 11 (4).

⁶⁹ Op. cit. Note 5, Statute 11 (6).

⁷⁰ Op. cit. Note 3, Statute 39.

⁷¹ Op. cit. Note 3, Statute 42.

⁷² Op. cit. Note 3, Statute 45.

⁷³ The ordinance was repealed on July 15, 1997. (Council Minutes 791 of June 1991 and 1106 of July 15, 1997).

⁷⁴ Op. cit. Note 3, Statute (49).

⁷⁵ Council Minute 1106 of July 15, 1997, and 1149 (v) of July 9, 1998.

⁷⁶ Term 2.1 of the July 15, 1997 Ordinance (Council Minute 1106 of July 15, 1997 and 1149 (v) of July 9, 1998).

⁷⁷ Normally for three to five years in the first instance

⁷⁸ Term 2.2 of the Ordinance of 15 July 1997 (Council Minute 1106 of July 15, 1997, and 1149 (v) of July 9, 1998)

⁷⁹ Ibid. Term 2.3.

⁸⁰ Ibid. Term 3.

⁸¹ Council Minute 1106 of July 15, 1997, and 1149 (v) of July 9, 1998.

⁸² Op. cit. Note 81.

⁸³ As identified by Section 124 A (10) of ERA 1988, which refers to Section 94 of FHEA 1992.

⁸⁴ See also Section 7 (1) of FHEA 1992.

⁸⁵ Article 3 (1) of the Articles of Government of the University of Northumbria at Newcastle Higher Education Corporation, September 1996.

⁸⁶ See also Section 71, Schedule 6 of FHEA 1992.

⁸⁷ Subsection (5) (2) Schedule 7 of ERA 1988; see also op. cit. Note 85, Article 5 (3).

⁸⁸ Op. cit. Note 85, Article 6 (2).

⁸⁹ Op. cit. Note 85, Article 6 (3).

⁹⁰ Op. cit. Note 85, Article 6 (4 & 5).

⁹¹ Op. cit. Note 85, Article 6 (6).

⁹² Op. cit. Note 85, Article 6 (7).

⁹³ Op. cit. Note 85, Article 7 (3).

⁹⁴ See Part 2, Chapter 12.

⁹⁵ Section (11) of Schedule 7 of ERA 1988; see also op. cit. Note 85, Article 10.

⁹⁶ Schedule 7 of ERA 1988, Part 4, states,

Academic Board. This body, loosely equivalent to a University Senate, is likely, of the Principal, Senior (and some junior) Teaching Staff, Chief Administrative Librarian, and to have responsibility, under the Board of Governors, for the academic work of the institution, including arrangements for admission and examination of students.

⁹⁷ Op. cit. Note 3, Statutes 33, 34, 35, 36, & 37.

⁹⁸ Op. cit. Note 85, Article 3 (3).

⁹⁹ Op. cit. Note 85, Article 4 (1).

¹⁰⁰ Op. cit. Note 85, Article 4 (2).

¹⁰¹ Op. cit. Note 85, Article 3 (2).

Chapter 11:

Academic Staff's Relation to the English University

11.1 Are the Academic Staffs in England Civil Servants?

To answer above question we have to identify first the definition of the civil servant in England.

11.1.1 The Legal Definition of a Civil Servant

There is no legal definition of a civil servant in England; such matters are governed by tradition¹. In law, a civil servant is a servant of the Crown.

O. Hood Philips defined the civil servant as one kind of Crown servant: "he is appointed by or on behalf of the Crown to perform public duties which are ascribable to the Crown; usually, but not necessarily, he is paid by the Crown out of the Consolidated Fund or out of moneys voted by parliament"².

Not all public servants are civil servants. Therefore, it is important to know whether a public servant is a civil servant because the terms of employment of a civil servant are governed by the royal prerogative and are subject to the Crown Procedures Act of 1947 and differ in several ways from other kinds of public employees.

1. According to the Common Law, the appointment and

dismissal of the civil servant are subject to the power of the Crown. Therefore, the Crown can dismiss a civil servant at any time regardless of whether the dismissal is with or without reason. This has been confirmed by the case of *Dunn v. R* (1896)³, but recent cases emphasise that a particular contract might give a civil servant greater protection (See *E.G. v. Civil Service Appeals Board ex parte Cunningham* 1991). This topic is outside the scope of this chapter.

2. The civil servant obtains his salary from the Crown. A servant of the Crown who works in the armed forces or the judiciary can be distinguished from the civil servant because they are subject to a special legal regime.

Accordingly, the academic staff members are not civil servants for the following reason: Universities are independent corporations and their staffs are not appointed by the Crown; they receive their salaries directly from the university under contract (as I shall explain later). Although a part of their salaries is funded by the state through HEFCE, the state has no direct legal relationship with the university employee.

11.2 Who Are the Academic Staff at English Universities?

In view of the fact that the academic staffs are not civil servants, we must examine what they are and whether the relationship between the staff and university is contractual or disciplinary or both. In England, it is clear that there are not any laws defining the academic

staffs at universities or their categories in both FHEA 1992 and ERA 1988. These definitions and categories and the conditions for their service have been left to each university's charter and internal statutes.

The meaning of *academic staff* at the University of Surrey is contained in Statute 1 (1), which states, subject to Statute 23, *academic staff* means all persons holding full-time appointments as Professors, Readers, Senior Lectures, or Lecturers of the University and such other persons or holders of appointments as the Council, in the recommendation of Senate may from time to time stipulate.

It is very clear from that statute that the academic staff at the University of Surrey is as follows:

- Professors
- Readers
- Senior Lectures
- Lecturers of the University

Moreover the statute leaves the door open for the University Council at the recommendation of Senate to add such other persons or holders of appointments as academic staff as stipulated.

In the University of Newcastle upon Tyne, the meaning of *academic staff* is reference those to whom Statute 62 (3) applies⁴. Statute 62 (3) applies to

1. The Professors and Readers and other members of the academic and research staff of the university appointed by the Council on the recommendation of the Senate

2. The Registrar and other members of the staff of the university who are designated by the Council for the purposes of the statute
3. The Vice-Chancellor to the extent and in the manner set out in the annex to the statute (of Newcastle University)

The statutes of both the Universities of Newcastle upon Tyne and Surrey do not mention to the conditions for appointment of any category of academic staff nor their salaries. Traditionally, the salaries and superannuation arrangements of academic staff and their equivalent are determined nationally by argument, whereas other conditions of service have been fixed locally or nationally depending on which side of the “binary line” the institution fell before 1992⁵. For example, the contract of the academic staff of pre-1992 universities contained no set hours of work and no fixed holiday entitlement; whereas the contract for academic staff of new universities includes a degree of control over both⁶. In addition, the salaries and conditions of service in pre-1992 universities are negotiated nationally, whereas the superannuation arrangements are based on a variety of schemes⁷. Thus, there is no single status of salaries and conditions of academic staff in the higher education system in England. However, there are organisations involved in negotiating the salaries such as the Committee of Vice-Chancellors and Principals of the Universities of U.K. (Pay and Employment Committee and Polytechnics and Colleges Employer's Forum). However, the institutions have agreed to establish a company limited by guarantee, the Universities and Colleges

Employers' Association (UCEA), to take over the work of all such bodies⁸. Where there are national pay scales, as in the case of Professors, there is a minimum salary. (See Tables 4 and 5). In recent years, universities have been encouraged to use these flexibly; for example, there are provisions for discretionary awards. This has contributed to an increased level of competition between universities, notably in respect to the recruitment of researchers.

Table 4: Professorial Payscale (Pre-1992 Universities)

Payscale Point	Annual Salary	Pre-Clin	Non-Clin	Res.Gr.6	Oth.Rel.6	ALCOG 6
1	36,401	Minimum point for the above grades				

Effective from January 4, 1999

Table 5 PAYSCALE: NON-CLINICAL ACADEMIC Pre-1992 Universities
[Effective from 1.4.99]

<u>Payscale Points</u>	<u>Annual Salary</u>	<u>Academic (NCAC)</u>	<u>Admin/Library/ Computer (ALCO)</u>				<u>Other Related (ACOR)</u>				<u>Research Staff (ARRS)</u>			
4	16,286		GR.1				GR.1B				GR.1B	#		
5	17,238						BEL.					*		
6	18,185													
7	18,915	LEC.A					GR.1 AB.					GR.1A		
8	19,869													
9	20,811			GR.2			GR.2							
10	21,597													
11	22,579													
12	23,521													
13	24,479													
14	25,452	LEC.B											GR.II	
15	26,429			Discr. Points	GR.3			Discr. Points	GR.3					
16	27,451													
17	28,478					GR.4				GR.4				
18	30,065													
**20	31,563	Discr. Points											Discr. Points	GR.III
21	32,571													
22	33,593													
23	34,634													
24	35,670													
25	36,568													
26	37,495													
27	38,561													
**Point 19 was deleted with effect from 1.4.91		Professorial Minimum £36,401	Grade 6 Minimum £36,401				Grade IV Minimum £36,401							

NOTES: # Minimum appointment level for staff with PhD * Age 27 point

In return for appointment of the academic staff member, there are several guiding principles that should be followed for appointment; and these principles differ from one university to another. In the University of Newcastle upon Tyne, for example, there are⁹

- Guidelines on appointment for academic-related research staff
- Guidelines on appointments to clerical, technical and analogous grades

11.3 Is the Relationship Between the Staff and University

Contractual or Disciplinary or Both?

To answer this question we have to find out the principle of law that deals directly with any matters regarding a person who works as an academic staff member and the subsidiary law if we don't find a solution for that matter in the principle law.

To commence, the academic staffs at universities are employees; and their appointments must be controlled by a contract made within the powers of the university or under the general law (employment law). Thus, there must be a contract between the person who is appointed as an academic staff member and the university. This fact can cause confusion concerning the power of the University Council to appoint such a person, and this power appears through administrative decision. It seems to me that the Council's power to appoint such a person as academic staff is permission for that appointment required under the charter to make a contract, and there

would be a person who has the right delegated by the Council to sign a contract on behalf of the university.

The appointment is thus by contract after permission from the University Council, and not by administrative decision, because there is a difference between them. The difference is that if there is an administrative decision then there is a general law that must be applied to the position of such a person similar to the Saudi system's subjection to a special public law jurisdiction (the Board of Grievances). However, this is not applicable in England. If there is a contract, however, then contract law must be applied to that person as the English system does and is subject to the ordinary courts.

As the appointment of the academic staff member is by contract by permission from the University Council, this appointment is for an office or position within the university which, according to the university statutes, may carry with it membership in the foundation¹⁰. Accordingly, there are two relationships between a university and an academic staff member—the first derived from the statutes of the university or such instrument, the other derived from the contract between the staff member and the university subject to the employment act. This mixture of sources leads to a conflict of judicial jurisdiction between the ordinary court and the Visitor (considered in detail in Chapter 13).

Normally, the contract incorporates the general university regulations, but an individual contract might override such regulation. For example, in the case of *Page v. Hull University Visitor*¹¹, Page was a

Lecturer at Hull University appointed under a contract that stated employment could be terminated by either party on three months notice, appointment "subject to university statutes", which provided that academic staff could be removed for good cause. Page was dismissed on grounds of redundancy within three months notice. He petitioned the Visitor of the university, claiming that the university was not entitled to dismiss him on the grounds of redundancy because under the university's statutes it could not dismiss him before retirement except for good cause. The Visitor rejected the petition, holding that the university was entitled to dismiss him either without notice for good cause as defined in the statutes or by three months notice. (This means, of course, according to the terms of his appointment). Thus the contract prevailed over the university statutes. (See more on the Visitor in Chapter 13).

Some relevant governing instruments must be applied to the contractual position of a member of the academic staff and the conduct of the contract between them and the university. The conduct is subject to the governing instrument of the university and also to the general law of employment, for example, Act of Parliament, Employment Act 1997, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relation Act 1976, and all the subordinate legislation (Ordinances, Regulations, and Rules) decided in accordance with the supplies of the governing instrument.

11.4 Conclusion

In the light of the discussion of the academic staff's relationship with the university, one may arrive at the following conclusions:

- The members of academic staff at English universities are Professors, Readers, Senior Lectures, and Lecturers of the university who hold full-time appointments.
- The members of academic staff are not civil servants.
- The civil servant is appointed by or on behalf of the Crown to perform public duties and paid by the Crown out of moneys voted by parliament.
- The relationship between the academic staff members and the university is contractual and disciplinary. Key to understanding this relationship is the knowledge that the legal basis of this relationship is the contract as it can override the statutes of the university.
- The relationship between the academic staff and university is governed by
 1. The contract of employment
 2. The relevant governing instrument, whether it be charter and statutes, Act of Parliament, etc.
 3. The general law of employment
 4. The terms of any collective agreement relevant to the academic staff.

Notes – Chapter 11

¹ John Alder, *Constitution and Administrative Law*, 1999, p. 265.

² O. Hood Philips, *Constitution and Administrative Law*, 1987, p. 336.

³ *Dunn v. R* (1896) 1QB 116.

⁴ Statute 62 (3) (2) of the Statutes of the University of Newcastle upon Tyne 1963.

⁵ D. J. Farrington, *The Law of Higher Education*, 1994, p. 236.

⁶ Ibid.

⁷ Ibid. p. 237. There are national superannuation schemes for new and old universities but, individuals can opt out of these.

⁸ Ibid. p. 238.

⁹ See Appendix 5.

¹⁰ Peter Smith, "Visitation of the Universities: A Ghost from the Past-1", *New Law Journal*, May 23, 1986, p. 484.

¹¹ *Page v. Hull University* (1993) 1 All ER 97.

Chapter 12:

Disciplinary Procedures at English Universities

12.1 Introduction

There is no legal obligation that the universities should have a formal disciplinary procedure; but such a procedure is normally highly desirable, especially in the procedure of fairness in the case of unfair dismissal. In general, it is difficult to find such disciplinary rules for covering all circumstances that may arise in practice because the rules vary according to particular circumstances, such as, type of work, working conditions, and so on. Therefore, when drawing up rules, the aim should be to specify clearly the necessary terms for the efficient and safe performance of work and for the maintenance of satisfactory relations within the workforce and between employees and management. Rules should not be, however, so general as to be meaningless; and they should be readily available. Thus, the legislature should review the rules and procedures periodically and, if necessary, revise them to ensure their continuing relevance and effectiveness.

When academic staff performance does not meet acceptable standards, the disciplinary procedures must be followed. These procedures, which are broadly similar for the pre- and post-1992

universities, can be found in the statutes of the relative universities and the contracts of the academic staffs, which may include such procedures, attach a copy of such procedures, or refer to such procedures. The question lingers: *To what extent are academic staff members free?*

12.2 Academic Staff and Freedom

12.2.1 Freedom of Religion

In the pre-1992 universities as well as the Universities of Oxford, Cambridge, and Durham, no religious qualification is required for a person to hold office. Exceptions can be found the Universities of Oxford, Cambridge, and Durham where such office is, either by Act of Parliament or by university or college statute restricted to persons in holy orders or confined to members of the Church of England by reason of a degree in divinity being a qualification for holding that office¹.

12.2.2 Freedom of Speech

Every individual and body of persons concerned involved in university government must take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for the members of the universities and for visiting speakers². Such steps are to ensure that the use of any of the universities' premises is not denied to any individual or body of persons on any ground connected with the beliefs or views of that individual or of any member

of that body or that body's policy or objectives³.

The University Council as a governing body is responsible for the management and administration of the university revenue and property and the conduct of its affairs⁴; therefore, the Council is in charge of securing freedom of speech and must issue and keep up to date a code of practice⁵ setting out the procedures to be followed by the university's members, in connection with the organisation of meetings and other activities⁶ and the conduct required of such persons in connection with any such meeting or activity, and dealing with such other matters as the Council considers appropriate⁷.

Every individual and body of persons concerned in the University Council must take such steps as are reasonably practicable, including where appropriate the initiation of disciplinary measures, to secure that the requirements of the university's code of practice are complied with⁸. However, the academic staff is free, within the law, to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges⁹.

12.3 The Rights and Duties of Academic Staff Members

All statutes of pre-1992 universities do not mention the rights and duties of academic staff members, but acceptable standard required from the academic staff according to such statutes the disciplinary procedure will meet. However, the acceptable standard itself is not defined in such statutes. Such matters are listed in

Ordinance made by the Council of the relative university; typically, the members of staff have a duty to carry out their work to the best of their ability and to abide by the terms and conditions of their employment. Standards of behaviour mean the minimum standards of conduct and performance that the universities will accept from members of staff. It is not possible to set out in detail the standards expected from members of staff in every respect as they are normally listed in their contract.

The rights and duties of the members of academic staff of the University of Newcastle upon Tyne are as follows¹⁰:

Professors

1. Professors are required to obtain the agreement in writing of the Vice-Chancellor before accepting or retaining any other employment that involves substantial calls upon his time or energies. Factors must be taken into consideration before agreeing to such employment¹¹:
 - The value of his outside work to the academic work of the staff member and his department and subject of study as well as the value of his special knowledge as a contribution to society.
 - The benefit to the university of increased contact with the profession, industry, and outside world.
 - The benefit to the university of thus attracting high-grade staff.
 - The difficulties for the university if the member of staff

jeopardises his own or his colleagues' work.

- The significant use of university staff, equipment, and materials.
 - Any conflict of interest between the outside body and the university. Normally consent will be given for a specified period but will depend on the nature of the commitment.
2. The Professor will promote the study of his subject through teaching and research. He will assume such duties and responsibilities as may be assigned to him by the head of his department. Any member of the academic staff of a department may be required to assume such responsibility for the administration of the department as may be required of him by Council in accordance with arrangements approved by Council. The duty to undertake administrative responsibilities is part of the standard terms of appointment of all members of the academic staff¹².
 3. The Professor will be *ex-officio* a member of the Board of the Faculty and of the Academic Board of the university.
 4. The Professor should examine, without further payment, in the examinations for degrees and diplomas of the university, when required to do so.
 5. The Professor should not, in connection with invention, patent, or process of manufacture, have authority to make representations on behalf of the university or to enter into any contract in the like behalf or to be concerned in the like

behalf in any transactions whatsoever relating thereto without the express consent of the Council.

6. The salary of the Professors will be in the professorial range, with superannuation benefits, and will be payable monthly in arrears. (See Tables 4 and 5 for the payscales of academic staff members.)
7. The Professor has the following rights with regard to trade unions:
 - The right to be a member of such trade union as he may choose.
 - Where he is a member of a trade union, the right, at any appropriate time to take part in the activities of the trade union (including any activities as, or with view to becoming, an official of the trade union) and the right to seek or accept appointment or election and (if appointed or elected) hold office as such an official.

Other Academic Staff Including Professors

1. The person appointed as academic staff will be eligible, immediately on starting his employment, to join the Universities' Superannuation Scheme (USS)¹³ and Universities' Supplementary Dependents' Scheme (USDPS). An employee's contribution at present is made at the rate of 6.35% of his salary and the university contributes such sum as will be required to maintain the full benefits of the scheme.

2. The retirement date will be the 30th day of September next following the date on which the member reaches the age of 65 years, unless his tenure of office is extended in accordance with the provisions of the Statutes of the University of Newcastle upon Tyne. (These points will be considered in detail later in this chapter.)
3. Because of the nature of the work, the university does not specify any terms or conditions relating to hours of work, in accord with the requirements of the Employment Protection (Consolidation) Act 1978. However, if the staff member is absent from his work, there are procedures to follow in the document "Absence from work". (See Appendix 6).
4. The academic staff member, in the event of absence from work due to sickness, is entitled to three months sick leave with full payment of salary, subject to the deduction of statutory sickness benefit the individual is entitled to receive. In the event of the incapacity continuing beyond the initial three-month period, the university may, at its absolute discretion, continue or discontinue payment of salary in whole or in part.
5. The members of academic staff have annual holidays with full salary. Such holidays will not be less than six weeks in any one year, normally to be taken during university vacations and subject to the reasonable needs of the university. In addition, there will be normal public holidays

and other days when the university is officially closed but similarly subject to the needs of the university.

6. All female members of staff, irrespective of length of service or number of hours worked, are entitled to 14 weeks' basic maternity leave. Nevertheless, female members of staff with at least 12 months' continuous service are eligible to receive extended maternity leave of up to 52 weeks.
7. The members of academic staff have the right to resign. (This issue will be considered in detail later in this chapter).

12.3.1 The Procedure for Promotion

The promotion procedures in British universities are more discretionary than those of Saudi universities and do not have formal qualification requirements.

As an example of the pre-1992 universities, the University of Newcastle upon Tyne's typical procedure for promotion of academic staff members is as follows:

1. Each Head of Department is required annually to forward proposals for promotion that should be submitted jointly by him and a member of academic staff concerned. In addition, an academic staff member may submit a confidential statement in support of his application direct to the appropriate administrative officer for the attention of the Statutory Committee in respect of Chair and Readership applications, and Faculty Promotions Committees or Central

Spending Authorities for other promotions. However, any Heads of Department not wishing to make any recommendations for promotion must advise the appropriate administrative officer in writing.

2. The Faculty Promotions Committees, Faculty Planning and Resources Committees, or the Spending Authorities will consider all submissions from departments in accordance with the agreed timetable and criteria for promotion and make recommendations to Senate and Council as appropriate.
3. In the case of promotions to Chair, Reader, and Senior Lecturer, the staff member concerned may attend the relevant meeting of the Faculty Promotions Committee or Spending Authority to discuss his case. However, in the case of promotions below the level of Senior Lecturer, the member of staff concerned will not normally be expected to attend the meeting.
4. The Heads of Department may be consulted by the Faculty Promotions Committees or Spending Authorities and are asked to make themselves available (or an alternate) on the day(s) upon which the Committee is meeting.
5. After consideration of all recommendations and statements by Heads of Department and candidates, the Faculty Promotions Committee or Faculty Planning and Resources Committee or Spending Authority will forward its

recommendations to the Statutory Committee (for Chairs and Readers) for consideration or to the Senate (for all other promotions) for approval.

12.4 The University Commissioners

The University Commissioners are established according to Section 202 of ERA 1988 and include five persons appointed by the Secretary of State for Education and Science whose duties and powers should be ceased on July 29, 1991¹⁴, unless the Secretary of State by order provides for their powers to cease at an earlier or later date¹⁵.

The commissioners' duty according to Section 203 (1) of ERA 1988 is to secure that the statutes of

- a. Any university or other institution to which, during the period of three years beginning August 1, 1987, grants in aid are or have been made by the Universities Funding Council or by the Secretary of State acting on the advice of the University Grants Committee¹⁶
- b. Any constituent college, school or hall or other institution of a university falling within paragraph (a) above¹⁷
- c. Any institution not falling with paragraph (a) above which is authorised by charter to grant degrees and to which, during the period of three years beginning August 1, 1987, grants are or have been made by the Secretary of State¹⁸

are modified¹⁹ to include the following:

1. Provision enabling an appropriate²⁰ body, or any delegate of such a body, to dismiss²¹ any member of the academic staff²² by reason of redundancy (*Redundancy* will be considered in detail later in this chapter.)
2. Provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the commissioners, to dismiss any member of the academic staff for good cause (*Good cause* will be considered in detail later in this chapter.)
3. Provision establishing disciplinary procedures determined by the commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment (considered in detail later in this chapter).
4. Provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal or who are otherwise disciplined (considered in detail later in this chapter).
5. Provision establishing procedures determined by the commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment (considered in detail later in this chapter).

However, no instrument made in exercise of the commissioners' powers took effect unless Her Majesty in Council had approved it²³. Moreover, where the commissioners proposed to exercise their powers, they had to send a copy of the proposed modifications to certain persons and had afforded those persons a reasonable opportunity of making representations as to the issues arising²⁴. After taking into account any representations made by those persons, the commissioners had to submit the modifications, with or without revisions, to Her Majesty in Council²⁵. Her Majesty in Council had the right to remit for reconsideration by the commissioners any modifications so submitted, and any such remission had to be accompanied by a declaration of the reasons for it²⁶. In that case, the commissioners had to reconsider and revise any modifications so remitted²⁷.

The post-1992 universities and other institutions of higher education are clearly not covered by the university commissioners' duties. Therefore, their academic staffs enjoy the protection from redundancy or dismissal provided by general law, their contract of employment, and Section 221 of ERA 1988.

The duties of the university commissioners are complete; and all the pre-1992 universities are now able to dismiss academic staff on grounds of redundancy as well as by good cause and have effective disciplinary and grievance procedures covering these staff in their statutes. Thus, the remainder of this chapter considers the Statutes of the Universities of Newcastle upon Tyne, Surrey, Durham, and

Sheffield to study and analyse the reasons (*good cause* and *redundancy*) for dismissing an academic staff member.

12.5 Good Cause

12.5.1 Definition of *Good Cause*

The meaning of *good cause* exists in the statutes of the pre-1992 universities, which define it²⁸ as follows:

Good cause in relation to the dismissal or removal from office or place of a member of the academic staff, being in any case a reason which is related to conduct or to capability or qualifications for performing work of the kind which the member of the academic staff concerned was appointed or employed to do, means

- Conviction for an offence that may be deemed by a Tribunal to be such as to render the person convicted unfit for the execution of the duties of the office or employment as a member of the academic staff
- Conduct of an immoral, scandalous, or disgraceful nature incompatible with the duties of the office or employment
- Conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office
- Physical or mental incapacity
- The terms *capability* and *qualifications* are defined as follows.
- *Capability*, in relation to such a member, means

capability assessed by reference to skill, aptitude, health, or any other physical or mental quality

- *Qualifications*, in relation to such a member, means any degree, diploma, or other academic, technical, or professional qualification relevant to the office or position held by that member

As EmpRA 1996 does not conflict with the special arrangements for post-1992 universities and higher education institutions, it applies to their academic staffs and employees. This Act confirmed the meaning of dismissal of an employee for reasons related to conduct, capability, or qualifications²⁹. Thus, the reasons for dismissal of academic staff members at pre-1992 universities by *good cause* fall within the categories of *capability*, *qualifications*, and *conduct*.

12.5.1.1 Qualifications

If the qualification is a condition of continued employment that a member of the academic staff must obtain a specified qualification within a specific time and this is not achieved, the employment may terminate as a result. There are a number of cases in which this situation might arise in higher education in relation not only to academic staff (as with a department requiring a staff member to obtain a doctorate), but also to support staff (e.g., medical and nursing staff required to obtain further qualifications, trainee librarians, and so forth).

2.5.1.2 Capability

As employees, the academic staff should usually perform their

duties at work with reasonable care in a professional capacity, and the university, as their employer, has the right to ask for a degree of skill reasonably expected from an ordinary member of that profession. Certain guidelines have been laid down by the Courts for dealing with alleged lack of capability³⁰.

An employer may have good grounds for thinking that an employee is not capable of doing the job properly; but in the general run of cases, the employer cannot regard that lack of capability as enough reason for dismissing said employee until that employee has been warned and given an opportunity to do better. Moreover, the employees (in this case the academic staff) must know what is expected of them³¹.

Thus it would not be fair to dismiss academic staff if they had not been warned about their lack of capability and given opportunity, including the offer of suitable training, to improve. (Fair and unfair dismissal, matters regulated by industrial Tribunals, are beyond the scope of this study) However, the academic staff member's appraisal report should identify weaknesses and recommend action to deal with them. This warning before dismissal is confirmed in the statutes of pre-1992 universities as a first stage in procedure for dismissing an academic staff member. (This is explained later in this chapter).

12.5.1.3 Misconduct

Misconduct is a reason to dismiss a member of the academic staff in a higher education institution. *How can we call such action misconduct?* There is no statutory definition of misconduct. Types of

conducts that might be considered misconduct are usually given as examples in the academic staff member's contract. The statutes of the pre-1992 universities under disciplinary procedure just mention "the matter is more serious" but do not define such matters and leave them to the universities to discern³². Yet, when these conducts are not spelt out, the general principle of law should be applied. The general principle of law in this matter is that the conduct must breach the contract signed between the university and the member of the academic staff. For example, if the contract is for teaching in the law school at the University of Newcastle upon Tyne and the staff member has refused to do so for no acceptable reason, this conduct could be considered misconduct and does not need to be specified in the contract.

Some examples of what might be considered misconduct are negligence, poor timekeeping or attendance, unauthorised absence, abusive or offensive language, insubordination, bringing the university into disrepute, refusal to obey reasonable instructions, and failure to devote reasonable care and attention to work. Repetition of such misconduct following a final written warning may result in dismissal.

However, any act of gross misconduct usually leads to dismissal of the academic staff member. Gross misconduct is conduct or behaviour likely to destroy the essential trust and confidence between the university and academic member; such action may make the academic staff members unsuitable for continued employment with the University. The following are examples of behaviour that may

constitute gross misconduct:

1. Unauthorised use or removal of university property
2. Theft or fraud (including falsification of records and false claims for pay)
3. Fighting, assault, or threats of violence
4. Deliberate damage to property
5. Being at work while under the influence of alcohol or other drugs
6. Gross negligence likely to cause serious loss, damage, or injury
7. Serious acts of insubordination
8. Serious breaches of health and safety rules
9. Sexual or racial misconduct, abuse, or harassment. Also conduct where criminal offences are involved might be fall within gross misconduct³³.

However, this conduct cannot result in the dismissal of the member of academic staff directly; all the circumstances arising as a result of an investigation must be considered.

There are small numbers of reported Tribunal on misconduct in higher education establishments. For example, in the case of Robert Farnborough against the Edinburgh College of Art³⁴, the Tribunal decided that a warning before dismissal was unnecessary. Robert Farnborough did not agree with a reallocation of teaching duties and refused to obey legitimate instructions from his Department Head. He posted a notice to students to the effect that he did not have time to

undertake the specified duties. He was dismissed and claimed unfair dismissal on the ground that he should have received an express warning of the possibility of dismissal.

The National Industrial Relations Court³⁵ decided that the Tribunal was entitled to hold that in these circumstances a warning to Farnborough of possible dismissal, as the result of his conduct, was unnecessary. He was “an educated man in a responsible academic position [and] must, or at least certainly ought to, have appreciated ... that his failure to co-operate in the work of the department as directed by the Head of Department must put his employment at risk”.

12.6 Redundancy

The statutes of the pre-1992 universities enable the Council, as the appropriate body, to dismiss any member of the academic staff by reason of redundancy. This raises questions relating to academic freedom; for example, *What does redundancy mean according to the university statute?* In the statutes of pre-1992 universities, dismissal should be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to³⁶

- The fact that the University has ceased, or intends to cease, to carry on the activity for the purposes of which the member of the academic staff concerned was appointed or employed by the university, or has ceased, or intends to cease, to carry on that activity in the place in which the member concerned worked

- The fact that the requirements of that activity for members of the academic staff to carry out work of a particular kind, or for members of the academic staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish

An exception exists for academic staff members appointed or promoted before November 20, 1987, when the Education Reform Bill was introduced. In addition, the member to be dismissed by reason of redundancy must be construed in accordance with Subsections 3 to 6 of Section 204 of ERA 1988, which sets forth,

1. For the purposes of this section a person should be taken to be promoted on or after November 20, 1987, if (and only if) immediately before that date he is paid on a scale that provides for a maximum rate of remuneration (his former pay scale) and on or after that date the terms of his appointment, or of his contract of employment, are varied (whether with effect before or after that date) so that
 - His rate of remuneration is increased to a rate which exceeds the highest point on his former pay scale at the date on which the increase takes effect.
 - He is paid on another scale on which the highest point at the date the variation takes effect exceeds the highest point on his former pay scale at that date.
 - He is paid on a basis that does not provide for a maximum rate of remuneration.

2. For the purposes of the above subsection, references, in relation to a pay scale, to the highest point on the scale at any date are references to the maximum rate of remuneration payable at that date in accordance with the scale whether on a regular or a discretionary basis.
3. For the purposes of this section, a person holding an office or position of any description shall not be taken to be promoted by reason only of any general variation of the terms of appointment or of contracts of employment of persons holding offices or positions of that description.
4. Modifications such as those mentioned in Subsection 2³⁷ should not apply in relation to a person who held an office or position at the institution in question immediately before November 20, 1987, by reason only of the fact that
 - He is appointed to, or employed in, a different office or position at the institution instead of his former office or position if the terms of his appointment or of his contract of employment relating to remuneration are the same as those of his former appointment or contract of employment.
 - He is appointed to, or employed in, an additional office or position at the institution which carries no remuneration.
 - He is promoted, appointed to, or employed in a different office or position at the institution if he is so promoted, appointed, or employed only on a temporary basis for a

particular purpose with an expectation that the promotion will cease to have effect, or that he will resume his former office or position, when that purpose is accomplished.

Thus, Article 204 of ERA 1988 makes it clear that modifications to facilitate dismissal for redundancy apply only to staff who enter into contracts of employment or are appointed on or after November 20, 1987, or who are promoted on or after that date (whether or not the promotion is backdated). If such contracts provides that the academic staff should not be dismissed by reason of redundancy, or if he is so dismissed, the staff member should be paid a sum in excess of the sum for which the employer is liable to pay him under Section 81 of the Employment Protection (Consolidation) Act 1978 since the contract had no effect³⁸.

What is the situation before November 20, 1987? The statutes of pre-1992 universities did not include provisions for dismissing any academic staff member of the university for redundancy but for good cause defined. Therefore, the pre-1992 universities had no right to dismiss any academic staff member by reason of redundancy³⁹ but had the right, and still do, to do so by reason of good cause.

The definition of redundancy uses the phrase “in the place where the member of academic staff was ... employed”. In such cases, the question is whether the university has contractual authority, express or implied, to order the member of academic staff to move or, in other words, to determine what degree of mobility the member of academic staff is subject to. The Tribunal must consider, therefore,

whether there is an express or implied mobility term in the contract of the academic staff member. If the member of academic staff is required to move to another department within the radius of the mobility obligation because of the closure of the department where he or she works, it is not possible to claim a redundancy payment since there has not been a cessation of the business in the place where he or she is employed⁴⁰. If, on the other hand, he or she is employed in a department, for example, in East Anglia and because of its closure is required to move to the Midlands, to which the mobility obligation does not extend, the refusal to move is justified and any dismissal would be by reason of redundancy⁴¹.

It should be noted from this definition of redundancy that if the requirements for academic staff members to carry out work of a particular kind, or to carry out that work in that place, have ceased or diminished or are expected to cease or diminish, this does not mean that the university cannot reorganise its business. The Lord Denning M.R. confirmed that in the case of *Johnson v. Nottinghamshire Police Authority*⁴², saying,

An employer is entitled to reorganise his business so as to improve its efficiency and, in doing so, to propose to his staff a change in the terms and conditions of their employment: and to dispense with their services if they do not agree. Such a change does not automatically give the staff a right to a redundancy payment. It only does so if the

change in the terms and conditions is due to a redundancy situation.

In considering whether there has been a diminution in the requirements of the business for the staff member to carry out a particular kind of work, the Tribunal must look at the contract terms of the staff member. *Cowen v. Haden*⁴³ is an example where an employee was employed as a divisional contracts surveyor and was “required to undertake, at the direction of the company, any and all duties which reasonably fall within the scope of his capabilities”. The Court of Appeal held that the requirement that the employee should perform the duties within the scope of his capabilities was restricted to the duties of a divisional contracts surveyor; the employers therefore had no right to require him to transfer from that work to assume the job of a quantity surveyor.

It should be noted that a reorganisation, which does not fall within the statutory definition of redundancy, could fall within some other substantial reason⁴⁴.

A particular difficulty in the case of academic staff is the meaning of “Activity” although there is no case authority on this point. It could be that “Activity” is treated by a university as a way of describing a teacher’s approach to his subject. For example, the university might decide that it no longer wishes to teach “Marxism”. Some safeguard is provided under the law in the instruments of government of new universities. For example, academic staff have freedom within the law to question and test received wisdom and to

put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their positions or any privileges they may have at the institution⁴⁵. Similar safeguards might be included in the charters of old universities.

12.7 Procedure for Dismissing an Academic Staff Member for Good Cause

Thus, the administrative authority (e.g., the Department Head) has the power to say that an action of a member of academic staff can be considered as good cause for dismissal. This is important because the statutes of pre-1992 universities⁴⁶ establish that where the matter is serious but falls short of constituting possible good cause for dismissal, the following procedure must be used.

12.7.1 First stage

If conduct or performance does not meet acceptable standards the member of the academic staff will normally be given a formal oral warning. The member will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of the right of appeal. A brief note of the oral warning will be kept but it will be spent after 12 months, subject to satisfactory conduct and performance⁴⁷.

This article is imperfect in that it does not define the standard

procedure for calling the performance of academic staff unacceptable, the procedure for issuing the punishment (oral warning), nor the person responsible for issuing it.

I think this matter has been left to the appraisal of the academic staff; thus, the decision is left to this report to define the acceptability of an academic staff's performance. I also believe the Department Head has the power to issue the oral warning because he has the power to issue a written warning (as will be described in the next section). If he has the power to issue the second stage of punishment, which is stronger than the first, then he should have the power to issue the oral warning. (For details about the appraisal of academic staff at the University of Newcastle upon Tyne, see Appendix 7.)

12.7.2 Second Stage

The statutes of the pre-1992 universities describe the next stage of disciplinary procedure.

If the offence is a serious one, or if a further offence occurs, a written warning will be given to the member of the academic staff by the Head of Department. This writing warning will give details of the complaint, the improvement required and the time-scale. It will warn that a complaint may be made to the University Secretary and Registrar seeking the institution of charges to be heard by a Tribunal if there is no satisfactory improvement

and will advise of the right of appeal. The Dean of the Faculty will keep a copy of this written warning but it will be disregarded for disciplinary purposes after 2 years subject to satisfactory conduct and performance.⁴⁸

The advantages of this statute are:

- The administrative procedure that must be followed to issue the written warning punishment is clearly defined.
- Who has the power to issue this punishment is clearly defined.
- The academic staff member's rights to appeal this punishment are clearly defined. If the member of academic staff wishes to appeal a disciplinary warning, he should inform the University Secretary and Registrar within two weeks; then the pro-vice chancellor must hear all such appeals, and his decision must be final⁴⁹.
- The deadline for disregarding this punishment is clearly defined.

12.7.3 Final Stage

If the academic staff member's performance still does not improve, the statutes of the pre-1992 universities provide for a third and final stage of disciplinary action

- (1) If there has been no satisfactory improvement following a written warning given or in any other case where it is alleged that conduct or

performance may constitute good cause for dismissal or removal from office, a complaint seeking the institution of charges, to be heard by a Tribunal, may be made to the University Secretary and Registrar who should bring it to the *attention of the Vice Chancellor*⁵⁰.

12.7.3.1 Vice-Chancellor's Disciplinary Authority at Pre-1992

Universities

All the Vice-Chancellors at pre-1992 universities have a similar disciplinary authority according to the universities' statutes⁵¹. These authorities can be summarised as follows:

1. The Vice-Chancellor should institute such investigations or inquiries (if any) as appear to him to be necessary to enable him to deal fairly with any complaint brought to his attention by the University Secretary and Registrar.
2. If it appears to the Vice-Chancellor that a complaint brought to his attention by the University Secretary and Registrar relates to conduct or performance that is trivial, invalid, or does not meet acceptable standards but for which no written warning has been given addressing the particular alleged infringement of rules, regulations, or bylaws for which a standard penalty is normally imposed in the university or within the faculty, school, department, or other relevant area, he may dismiss it summarily or decide not to proceed further.

3. If the Vice-Chancellor does not dispose of a complaint under the above paragraph, he should treat the complaint as disclosing a enough reason for proceeding further and, if he sees fit, may suspend the member with full pay pending a final decision.
4. Where the Vice-Chancellor proceeds further, he should write to the academic staff member concerned, inviting written comment.
5. When the written comments are received (if any), the Vice-Chancellor should consider the matter in the light of all the material then available and may
 - Dismiss it himself
 - Refer it for consideration under the first and second stages of the disciplinary procedure
 - Deal with it informally himself if it appears appropriate to do so and if the academic staff member agrees in writing that the matter should be dealt with in that way
 - Direct the University Secretary and Registrar to prefer a charge or charges to be considered by a Tribunal.
6. If no comment is received within 28 days, the Vice-Chancellor may proceed as aforesaid as if the member concerned had denied the substance and validity of the alleged case in its entirety.
7. In any case where the Vice-Chancellor has directed that a charge or charges be preferred by the University Secretary

and Registrar, he should request the Council to appoint a Tribunal to hear the charge or charges and to determine whether the conduct or performance of the member of the academic staff concerned constitutes good cause for dismissal or otherwise constitutes a serious complaint relating to the member's appointment or employment⁵².

12.7.3.2 Institution of Charges

In the pre-1992 universities, there must be a body responsible to take charge of proceedings. This body is usually the University Secretary and Registrar or if he or she is unable to act there must be another officer appointed by the Vice-Chancellor⁵³.

The officer in charge of the proceedings should formulate, or arrange for the formulation of, the charge or charges and should present, or arrange for the presentation of, the charge or charges before the Tribunal⁵⁴. The duties of the officer in charge of the proceedings follow⁵⁵:

- To forward the charge or charges to the Tribunal and to the academic staff member concerned together with the other documents therein specified
- To make any necessary administrative arrangements for the summoning of witnesses, the production of documents, and generally for the proper presentation of the case before the Tribunal

12.7.4 The Tribunal

In the pre-1992 universities, the Tribunal appointed by the Council at the request of the Vice-Chancellor consists of⁵⁶

- A Chairman
- One member of the Council, not being a person employed by the university
- One member of the academic staff nominated by the Senate

12.7.4.1 Tribunal Procedure

Certain points should be ensured during the Tribunal procedure⁵⁷:

1. The member of the academic staff concerned is entitled to be represented by another person, whether such person be legally qualified or not, in connection with and at any hearing of charges by a Tribunal.
2. A charge should not be determined without an oral hearing at which the academic staff member concerned and any person appointed by him to represent him are entitled to be present. This has been confirmed in the case of *Clarke v. Trimoco Motor Group*⁵⁸ where E.A.T. said:

an employee before being dismissed must, in order to satisfy the requirements of natural justice, be given an opportunity of giving an explanation, save in those rare cases where

there is no possibility of the employee giving an explanation of the conduct alleged or where it is plainly admitted so that there may be no cause to ask for an explanation...

3. The academic staff member and any person representing the staff member may call witnesses and, if he asks to do so, may question witnesses upon the evidence on which the case against him is based⁵⁹.

4. Full and enough provision must be made for

- Postponements, adjournments, dismissal of the charge or charges for want of prosecution, and remission of the charge or charges to the Vice-Chancellor for further consideration and for the correction of accidental errors
- For appropriate time limits for each stage (including the hearing) to the intent that any charge thereunder should be heard and determined by a Tribunal expeditiously as reasonably practicable

All above points define the principle course the Tribunal must take it in its consideration during the trial in the Tribunal to satisfy the requirements of natural justice.

The Tribunal, in making the decision to dismiss an academic staff member (as an employee) should consider several related cases carefully:

- Where a university who treats a member of academic staff differently (for example, by dismissing one and not

another) will not be held to have dismissed unfairly, if it provided that the decision was one which a reasonable member of academic staff could reach⁶⁰.

- Where a member of academic staff has been dismissed for an offence (e.g., assaulting another employee) but there is evidence that in the past other members have not been dismissed for a similar offence⁶¹ or where there is a theft, but the university cannot determine which member is responsible and dismisses a group of academic staff⁶², the question for the university is whether in the particular case dismissal is a reasonable response to the misconduct. The Tribunal should examine arguments based upon disparity of treatment with particular care⁶³.

12.7.4.2 Notification of Tribunal Decisions

When the Tribunal has decided the case, the following procedure must be followed⁶⁴:

- A Tribunal should send its decision on any charge referred to it (together with its findings of fact and the reasons for its decision regarding that charge and its recommendations, if any, as to the appropriate penalty) to the Vice-Chancellor and to each party to the proceedings.
- A Tribunal should draw attention to the period of time within which any appeal should be made by ensuring that a copy of the appeals procedure accompanies each copy of its decision sent to a party to the proceedings.

12.7.5 Powers of the Appropriate Officer

Before I explain the powers of the appropriate officer, it is wise to ask *Who is the appropriate officer?* The appropriate officer, according to the pre-1992 universities' statutes, is the Vice-Chancellor; and any action taken by him should be confirmed in writing⁶⁵. The Vice-Chancellor, as the appropriate officer, has the right to exercise the following power⁶⁶. Where the charge or charges are upheld and the Tribunal finds good cause and recommends dismissal or removal from office, the appropriate officer should decide whether to dismiss the member of the academic staff concerned.

This means that the decision to dismiss an academic staff member after the Tribunal has found good cause to do so is in the hands of the Vice-Chancellor. Thus, the Tribunal has no power to dismiss an academic staff member; it may only recommend to the Vice-Chancellor dismissal. The Tribunal decision is not compulsory for the university Vice-Chancellor; however, the Vice-Chancellor cannot dismiss a member of the academic staff without recommendation from the Tribunal. In my view, the Tribunal is a phase of litigation which must be followed before dismissing an academic staff member.

In any case where the charge or charges are upheld, other than where the appropriate officer has decided to dismiss the academic staff member concerned, the action available to the appropriate officer (not comprising a greater penalty than that recommended by the Tribunal) may be

1. To discuss the issues raised with the member concerned
2. To advise the member concerned about his future conduct
3. To warn the member concerned
4. To suspend the member concerned for such period as the appropriate officer should think fair and reasonable (not to exceed 3 months after the Tribunal's decision)
5. To carry out any combination of the above or such further or other action under the member's contract of employment or terms of appointment as appears fair and reasonable in all the circumstances of the case

12.8 Dismissal in Relation to Employment

Under University Contract

12.8.1 Definition of *Dismissal*

According to the pre-1992 universities' statutes, *dismissal* means⁶⁷ the removal or removal from office of a member of the academic staff and, in relation to employment under a contract, should be construed in accordance with Section 55 of the Employment Protection (Consolidation) Act 1978. This section has been changed to Section 95 of the EmpRA 1996, which states that

2. For the purposes of this part an employee is dismissed by his employer if (and subject to subsection 2 and section 96, only if)
 - (a). The contract under which he is employed is terminated by the employer (whether with or without notice)

- (b). He is employed under a contract for a fixed term and that term expires without being renewed under the same contract
 - (c). The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct
3. An employee should be taken to be dismissed by his employer for the purposes of this part if
- (a) the employer gives notice to the employee to terminate his contract of employment, and
 - (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire; and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

It should be noted that some situations clearly fall within the definition of dismissal, for example, an actual dismissal; yet, some situations are deemed to be a dismissal, for example, a resignation prompted by a repudiatory breach on the employer's part or the expiry of a fixed term contract. Certain situations, for example, a frustrating event or a voluntary resignation unprompted by action on the employer's part, are outside the definition.

It is important when determining whether an action falls within

the definition of dismissal, to start with the statutory language and then examine the relevant judicial decisions. This differs from the common law position involving wrongful dismissal, to which the statutory definition does not apply. It is also important to bear in mind that an event treated as a dismissal by the statute may not be a dismissal in common law. For example, the expiry of a fixed-term contract is expressly treated as a dismissal by s.95 (2)(b). In common law, however, it would not be treated as a dismissal⁶⁸.

If there is any dispute in Tribunal proceedings as to whether the employee was dismissed or not, the burden is upon the employee to satisfy the Tribunal that he or she was dismissed.

12.8.2 Termination With or Without Notice

As a general rule, termination happens when either party informs the other clearly or unequivocally that the contract is to end or the circumstances are such that it is clear that termination was intended or that it can be understood that termination was intended.

12.8.3 Employee Repudiation

In the case of an academic staff member whose actions amount to a repudiation of his or her contract of employment, the university's acceptance of that repudiation will be treated as a dismissal for the purposes of the statutory definition of dismissal⁶⁹.

12.8.4 Frustration

Frustration happens when circumstances beyond the control of either party to a contract make it incapable of being performed in the form that was undertaken by the contracting parties. In that case, the contract terminates automatically and the frustrating event will not be treated as a dismissal for the purposes of the employee's statutory rights. The most common examples are illness and imprisonment. The death of a member of academic staff is also best treated as a frustrating event, but it does not apply to the university where we cannot imagine the death of a university. Yet, if a university were to be abolished by Act of Parliament, for example, this could be treated as a frustrating event. The effect of frustration is automatic termination of the contract without either party having to take steps to bring it to an end. Since the staff member is not treated as having been dismissed, a complaint of unfair dismissal will fail⁷⁰.

12.8.5 Termination by Mutual Agreement

In common law, the parties are free to enter into an agreement that the contract should terminate and may insert a term into the contract stipulating that the employee accepts an agreed sum in satisfaction of any claims he or she may have in the event of the occurrence of certain specified events. However, the agreement which purports to exclude or limit any provision in the Employment Rights Act 1996 should be failed according to s. 203 (1).

12.8.6 Resignation

A resignation will be treated as a dismissal if the member of academic staff is invited to resign⁷¹. It may also be turned into a dismissal if the member of the academic staff is forced to leave earlier than the date of expiry of his or her notice of resignation⁷². There is no dismissal, however, where the member of academic staff resigns and the university invokes a contractual provision entitling him or her to terminate the contract early by making a payment in lieu of notice so that the contract ends before the expiry of the employee's notice.⁷³

12.8.7 Fixed-term Contract

Fixed-term contracts may take a number of forms. The contract may specify that it is to continue for a stated period, for example, five years from January 1, 1999. In that case, it cannot be terminated before the expiry of that period unless its terms empower the parties to terminate it earlier or they agree to bring it to an end⁷⁴.

A second type of fixed-term contract is one which provides for a definite period of employment but specifies that it may be brought to a premature end by either party giving the other a stated period of notice of termination, for example six months or a year. In *Dixort v. British Broadcasting Corp.*⁷⁵, the Court of Appeal held that such a contract is a contract for a fixed term even though it is terminable by notice on either side before the expiry of the term. Lord Denning M.R. emphasised that a fixed-term contract must be for a specified period.

12.8.8 Constructive Dismissal

Constructive dismissal is the term applied to a resignation by an academic staff member in circumstances such that he or she is entitled to terminate the contract without notice because of the university's conduct. In cases of constructive dismissal, the Tribunal must first consider whether the university's action is in breach of his or her contractual obligations or is a repudiation of them. That will involve determining the express terms of the contract and considering whether any terms should be implied. Still, it should be noted that, once the breach or repudiation has been established, it must be serious enough to entitle the member of academic staff to leave without notice⁷⁶. Examples of a breach of an express term are a failure to pay wages; a refusal of holiday entitlement; and unilateral alterations in pay, status, or workplace⁷⁷.

Once the Tribunal has decided that there has been a breach or repudiation serious enough to entitle the academic staff member to end the contract immediately, it must then be satisfied that the academic staff member's departure was caused by the breach⁷⁸. It must be satisfied also that he or she has not waived the right to terminate by staying on too long after the conduct in question, otherwise he or she may be taken to have elected to approve the contract⁷⁹. In the event of a later resignation or upon unequivocal acceptance of the repudiation, a claim of constructive dismissal is not possible⁸⁰.

Finally, it may be noted that a constructive dismissal is not

automatically unfair and in certain circumstances may be fair⁸¹.

12.8.9 Academic Staff Leaving Early

The effect of this term is that if a member of academic staff (even if the university has given him notice) walks out without giving any notice at all, he or she is treated as not having been dismissed⁸². Provided, however, that he or she gives some notice (not necessarily that which is required to be given under the contract or under s. 86(2) of EmpRA 1996), the statutory requirement will have been satisfied⁸³.

In this view, notice amounts to no more than notification. In cases of this kind, the effective date of termination of the contract of the member of academic staff is the date on which he or she ceases working in accordance with the counter-notice and not the date when the notice of the university would have expired⁸⁴. This means that the three-month limitation period for presenting a complaint of unfair dismissal begins on the date the counter-notice takes effect.

12.8.10 Public Interest Disclosure

The Public Interest Disclosure Act 1998, which came into effect January 1, 1999, gives legal protection to university members against dismissal or penalty by the university as a result of disclosing in the public interest certain serious concerns. It is a fundamental term of every contract of employment that an employee faithfully serve the employer and not disclose confidential information about the employer's affairs. However, an individual within the organisation

should have the right to disclose certain matters of public interest without fear of reprisal.

Accordingly, academic staff members who believe that they have evidence of malpractice or impropriety that would be in the public interest to disclose should bring their concerns to the attention of the appropriate university officer. The Act, however, does not define *public interest*; but, *qualifying disclosure* is defined⁸⁵ as any information, which must be in the reasonable belief and with good faith, tends to show one or more of the following:

- Financial malpractice or impropriety or fraud
- Failure to comply with a legal obligation or with the statutes and regulations of the university
- Dangers to health and safety or the environment
- Academic or professional malpractice
- Miscarriage of justice
- Improper conduct or unethical behaviour
- Criminal activity (not covered by the above)
- Attempts to conceal any of the above

(For details about the Procedures for Making a Disclosure at the University of Newcastle upon Tyne, see Appendix 8.)

12.9 Removing an Academic Staff Member on Medical Grounds

This section will study and analyse the legal procedure that must be followed to remove a member of academic staff from his or her office for incapacity on medical grounds as good cause. The legal

procedures according to the statutes of pre-1992 universities are as follows⁸⁶:

1. Where it appears that the removal of a member of the academic staff on medical grounds would be justified, the appropriate officer (Vice-Chancellor) should
 - (a) Inform the member accordingly
 - (b) Notify the member in writing that it is proposed to make an application to the member's doctor for a medical report and should seek the member's consent in writing in accordance with the requirements of the Access to Medical Reports Act 1988.
2. If the member shares that view the University should meet the reasonable costs of any medical opinion required.
3. If the member does not share that view, the appropriate officer should refer the case in confidence, with any supporting medical and other evidence (including any medical evidence submitted by the member), to a board comprising one person nominated by the Council; one person nominated by the member concerned or, in default of the latter nomination, by the Senate, and a medically qualified chairman jointly agreed by the Council and the member or, in default of agreement, to be nominated by the President of the Royal College of Physicians.
4. The Board may require the member concerned to undergo

medical examination at the university's expense.

In above paragraph certain points must be mentioned:

- The paragraph makes separate provision for the assessment of incapacity on medical grounds as a good cause for dismissal or removal from office.
- In the paragraph references to *medical grounds* are references to capability assessed by reference to health or any other physical or mental quality.
- In the paragraph references to the *appropriate officer* are references to the Vice-Chancellor or an officer acting as his delegate to perform the relevant act.
- References to the member of the academic staff include, in cases where the nature of the alleged disability so requires, a responsible relative or friend in addition to (or instead of) that member.

If the board determines that the staff member should be required to retire on medical grounds, the appropriate officer should direct the University Secretary and Registrar or his delegate to terminate the employment of the member concerned on those medical grounds⁸⁷.

12.10 Appeals

This section establishes procedures for hearing and determining appeals by members of the academic staff who are dismissed or under notice of dismissal or who are otherwise

disciplined.

12.10.1 Kinds of Appeal

According to the statutes of pre-1992 universities, an appeals
lie⁸⁸

- a. To appeals against the decisions of the Council as the appropriate body (or of a delegate of that body) to dismiss in the exercise of its powers a member of the academic staff by the reason of redundancy
- b. To appeals arising in any proceedings, or out of any decision reached, to discipline, dismiss, or remove a member of academic staff from office other than appeals against disciplinary warnings
- c. To appeals against dismissal otherwise than in points (a) and (b) above
- d. To appeals against discipline otherwise than in point (b)
- e. To appeals against decisions reached for removing a member of academic staff for incapacity on medical grounds.

However, no appeal should lie against

1. A decision of the appropriate body (the University Council) that there should be a reduction in the academic staff of the university as a whole or of any faculty, school, department, or other similar area of the university by way of redundancy
2. The findings of fact of a Tribunal (under first point of Notification of Tribunal Decisions) save where, with the

consent of the person or persons hearing the appeal, fresh evidence is called on behalf of the appellant at that hearing

3. Any finding by a board set up in the matter of removing an Academic staff member for incapacity on medical grounds.

The above references to *the person appointed* are references to the person appointed by the Council to hear and determine the relevant appeal. The parties to an appeal should be the appellants and the University Secretary and Registrar and any other person added as a party at the direction of the person appointed.

12.10.2 Institution of Appeals

A member of the academic staff should institute a written notice of appeal setting out the grounds of the appeal to the University Secretary and Registrar within 28 days of the date on which the document recording the decision appealed from was sent to the appellant or such longer period, if the notice of appeal was served on the University Secretary and Registrar outside the 28 day period. The person appointed to hear and determine appeals (explained later) should not permit the appeal to proceed unless justice and fairness so require consideration of the circumstances of the case. The University Secretary and Registrar should bring any notice of appeal received and the date when it was served to the attention of the Council and should inform the appellant that he has done so⁸⁹.

12.10.3 Persons Appointed to Hear and Determine Appeals

Where an appeal is instituted, the Council should appoint a person to hear and determine that appeal⁹⁰. The person appointed should sit alone unless he considers that justice and fairness will best be served by sitting with two other persons. These other persons should be

- One member of the Council not employed by the University
- One member of the academic staff nominated by the Senate.

These persons are persons not employed by the university who hold, or have held, judicial office or who are barristers or solicitors of at least ten years standing.

12.10.4 Provisions Concerning Appeal Procedures and Powers

The procedure to be followed in respect to the preparation, consolidation, hearing, and determination of appeals should be without prejudice to whole disciplinary procedures in general. Such procedure must ensure⁹¹

- That an appellant is entitled to be represented by another person, whether such person be legally qualified or not, in connection with and at any hearing of his appeal
- That an appeal should not be determined without an oral hearing at which the appellant, and any person appointed by him to represent him, are entitled to be present and,

with the consent of the person or persons hearing the appeal, to call witnesses

- That full and enough provision is made for postponements, adjournments, dismissal of the appeal for want of prosecution, and correction of accidental errors
- That the person appointed may set appropriate time limits for each stage (including the hearing itself) to the intent that any appeal should be heard and determined as expeditiously as reasonably practicable

The person or persons hearing the appeal may allow or dismiss an appeal in whole or in part and, without prejudice to the foregoing, may

- Remit an appeal from a decision which had been taken under the procedure to remove an academic staff member for redundancy to the Council as the appropriate body (or any issue arising in the course of such an appeal) for further consideration as the person or persons hearing the appeal may direct
- Remit an appeal arising under the disciplinary procedure for re-hearing by a differently constituted Tribunal to be appointed by the Council
- Remit an appeal from a decision of the appropriate officer which had been taken under the procedure to remove a member of academic staff for incapacity of medical grounds for further consideration as the person or

persons hearing the appeal may direct

- Substitute any lesser alternate penalty open to the appropriate officer following the finding by the Tribunal that heard and pronounced upon the original charge or charges

The person appointed by the Council to hear and determine appeals should send the reasoned decision, including any decision reached in exercise of his powers on any appeal together with any findings of fact different from those come to by the Council as the appropriate body or by the Tribunal, as the case may be, to the Vice-Chancellor and to the parties to the appeal⁹².

12.11 Grievance Procedures

In the statutes of the pre-1992 universities, the aim of grievance procedures is to settle or redress individual grievances promptly, fairly and so far as may be within the faculty, school, department, or other relevant area by methods acceptable to all parties⁹³. At the University of Newcastle upon Tyne, there are different types of grievance procedures, for example,

- Grievance procedure for clerical and related staff
- Grievance procedure for technical staff
- Grievance procedure for administrative, library, computing, and other related staff⁹⁴

The grievances to which this paragraph applies are ones by members of the academic staff concerning their appointments or

employment where those grievances relate⁹⁵

- To matters affecting themselves as individuals
- To matters affecting their personal dealings or relationships with other staff of the university.

12.11.1 Exclusions and Informal Procedures

If other remedies within the faculty, school, department, or other relevant area have been exhausted, the member of the academic staff may raise the matter with the head of the faculty, school, department, or other relevant area⁹⁶. If the staff member is dissatisfied with the result of the above approach or if the grievance directly concerns the head of the faculty, school, department, or other relevant area, the member may apply in writing to the Vice-Chancellor for redress of grievance⁹⁷. If it appears to the Vice-Chancellor that the matter has been finally determined or that the grievance is trivial or invalid, he may dismiss it summarily or take no action upon it. If it so appears to the Vice-Chancellor, he should inform the member and the Grievance Committee accordingly⁹⁸. If the Vice-Chancellor is satisfied that the subject matter of the grievance could properly be considered with (or form the whole or any part of) the following, he should defer action until the relevant complaint, determination, or appeal has been heard or the time for instituting it has passed and should notify the member and the Grievance Committee accordingly⁹⁹.

- A complaint against disciplinary procedure
- A determination for removing a member of academic staff

for incapacity on medical grounds

- Appeals procedure

If the Vice-Chancellor does not reject the complaint or does not defer action upon it, he should decide whether it would be appropriate, having regard to the interests of justice and fairness, for him to seek to dispose of it informally. If he so decides, he should notify the member and proceed accordingly¹⁰⁰.

12.11.2 Grievance Committee Procedures

If the grievance has not been disposed of as described above, the Vice-Chancellor should refer the matter to the Grievance Committee for consideration¹⁰¹. The Grievance Committee must be appointed by the Council and comprise¹⁰²

- A Chairman
- One member of the Council not being a person employed by the University
- One member of the academic staff nominated by the Senate

It is not clear who the Chairman of the Committee should be. *Should he be a member of academic staff, a member of the University Council, or a solicitor, for example?* In my view, the Chairman in the above Committee should be the Chairman of the University Council.

The procedure in connection with the consideration and determination of grievances should be determined in Ordinances in such a way as to ensure that the aggrieved person and any person

against whom the grievance lies should have the right to be heard at a hearing and to be accompanied by a friend or representative (explained later in the section on natural justice). The Committee, however, should inform the Council whether the grievance is well founded; and if it is well founded, the Committee should make such proposals for the redress of the grievance as it sees fit¹⁰³.

12.12 Removing the Vice-Chancellor

The Council may request its Chairman remove the Vice-Chancellor from office for *good cause* (as defined in the statutes¹⁰⁴) in accordance with the following procedure¹⁰⁵:

1. A complaint seeking the removal from office of the Vice-Chancellor for good cause may be made by not less than three members of the Council to the Council Chairman.
2. If it appears to the Council Chairman, from the material before him, that the complaint raises a *prima facie* case and that this could, if proved, constitute good cause for dismissal or removal from office, he should request the Council to appoint a Tribunal to hear and determine the matter.
3. If it appears to the Council Chairman that a complaint made to him does not raise a *prima facie* case or is trivial or invalid, he may recommend to the Council that no further action be taken upon it.
4. When the Council has appointed a Tribunal, it should instruct a solicitor or other suitable person to formulate a

charge or charges and to present, or arrange for the presentation of, the charges before the Tribunal.

5. A Tribunal appointed by the Council should comprise
 - (a). An independent Chairman
 - (b). One member of the Council not employed by the university
 - (c). One member of the academic staff
6. Subject to the principles of justice and fairness, the Tribunal may determine its own procedure.
7. The Tribunal should send its reasoned decision on any charge referred to it together with its findings of fact regarding the charge and its recommendations, if any, as to the appropriate penalty to the Council Chairman and to the Vice-Chancellor, drawing attention to the period of time within which any appeal should be made.
8. Persons appointed to hear such an appeal should be persons independent of the university holding, or having held, judicial office or being barristers or solicitors of at least 10 years standing and should, subject to the principles of justice and fairness, determine the procedure to be adopted in hearing the appeal.
9. A person appointed should send the reasoned decision on the appeal, together with any findings of fact different from those come to by the Tribunal and his recommendations, if any, as to the appropriate penalty, to the Vice-Chancellor

and to the Council Chairman.

10. Where the Tribunal has upheld a charge or charges on appeal, the Council Chairman should decide whether to dismiss the Vice-Chancellor. (In my opinion, this final result is unacceptable as it says that there is no compulsory duty for the Council Chairman to dismiss the Vice-Chancellor. In practice, however, the Chairman generally follows the recommendation of the Tribunal.)

When a complaint has been referred to the Council Chairman, the Chairman may suspend the Vice-Chancellor from his duties and may exclude the Vice-Chancellor from the precincts of the university or any part thereof without loss of salary¹⁰⁶.

The same procedure to remove a member of academic staff for incapacity on medical grounds applies to the Vice-Chancellor, subject the following modifications¹⁰⁷:

- for references to a member of the academic staff there should be substituted references to the Vice-Chancellor
- for any reference to the office of Vice-Chancellor there should be substituted a reference to the office of Council Chairman
- If the board determines that the Vice-Chancellor should be required to retire on medical grounds, it should ask the Chairman, as the appropriate officer, to decide whether or not to terminate the appointment of the Vice-Chancellor on those medical grounds.

12.13 Removal of Members of Court and Council of the University

Any member of the Court, other than an *ex-officio*¹⁰⁸ member or a member of the academic staff, may be removed from membership of the Court for good cause by the Court¹⁰⁹. Also, any member of the Council, other than an *ex-officio* member or an elected member¹¹⁰, may be removed from Council membership for good cause by the Council¹¹¹, or by the Court at the University of Sheffield¹¹². No member of the Court or Council should be removed without a reasonable opportunity to be heard by the Court or Council (as the case may be) in his own defence¹¹³.

In this matter, *good cause* means¹¹⁴

- Conviction for an offence which may be deemed by the Court or the Council, as the case may be, to be such as to render the person convicted unfit for the execution of the duties of the office
- Conduct of an immoral, scandalous, or disgraceful nature incompatible with the duties of the office
- Conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office whether such failure results from physical or mental incapacity or otherwise

It is noteworthy that the Statutes of the Universities of Newcastle upon Tyne and Durham do not mention such provisions for removing members of Court and Council.

12.14 Retirement and Resignation of Officers and Academics

According to Statute 25 (1) of the Statutes of the University of Surrey, the Vice-Chancellor, the Pro-Vice-Chancellors, the University Secretary and Registrar, the Librarian, the members of the academic staff, and the holders of any post specified for this purpose by the Council should retire from office on the September 30 following the date prescribed for retirement in the contract of service of the person concerned, provided that the term of office of these persons may be extended by the Council, on the recommendation of the Senate, for one year or more.

In the above paragraph, there are two points that must be considered:

- It does not identify the exact age of retirement, thus age is according to the contract of service of the person concerned.
- It gives the Council the power to make an extension to such persons for one year or more and does not identify the maximum period for such extension.

The holder of any post referred to above should be at liberty to resign his appointment and terminate his engagement with the university by giving to the Council at least three calendar months' written notice to that effect expiring on either April 30, August 31, or December 31 in any year¹¹⁵.

In the University of Newcastle upon Tyne, however, the Vice-

Chancellor, the Dean of Medicine, the Professors, the Readers, and all other teachers and officers of the University (except the Chancellor and Treasurer) shall vacate office between August 1 and September 30 next following their 65th birthdays, as may be determined by the Council, provided that the term of office of these persons may be extended by the Council, on the Senate's recommendation, for one year or more but not for more than five years in all¹¹⁶.

12.14.1 Exceptional Circumstances

1. Provided also that nothing in this Statute 60 (1) should prevent the Council from appointing to part-time posts, for periods of not more than one year at a time, persons who, at the date of the first such appointment, were over 65 years of age¹¹⁷
2. Provided that the part-time Professors, Readers, Lecturers, and Clinical Teachers in the Faculty of Medicine whose primary appointments are on the active medical staff of one or more of the associated hospitals should vacate office if they cease to be on that staff, unless in view of exceptional circumstances the Council, at the Senate's recommendation, otherwise determines¹¹⁸.

At the University of Durham, however, the Vice-Chancellor, the Professors and Readers, and all other officers and Teachers in the university may retire, on giving due notice, at any time after reaching the age of 60 years and should be required to retire by September 30 following their 65th birthdays, provided that the term of office may be

extended by the Council for one year or more but not more than five years in all¹¹⁹. The provisions of Statute 38 relating to retirement should not apply to canon Professors¹²⁰.

12.15 The Rules of Natural Justice

It is very clear from this examination of the disciplinary procedures at pre-1992 universities that the statutes have observed the rules of natural justice and emphasised the importance of applying these rules for all disciplinary procedures in the university.

The best example for emphasising the application of the rules of natural justice (e.g., the right to know the charges being faced and the right to be heard) in relevance to the university is the case of *Vidyodaya University Council v. Silva. (P.C.)*¹²¹. In that case, the respondent, who was appointed by the Vice-Chancellor of the Vidyodaya University of Ceylon as Lecturer in the Department of Economics and Business Administration, was later notified in writing by the Vice-Chancellor that the University Council, under the powers conferred by Section 18 (e) of the university statute, had terminated his appointment. The respondent thereupon applied to the Supreme Court of Ceylon for mandates in the nature of writs of certiorari and mandamus to quash the order of the appellant Council, contending, as was not disputed, that he had not been told of the nature of the accusations against him nor afforded an opportunity of being heard in his own defence. For the appellants, it was contended that those circumstances were of no relevance because the Council was not

acting in a judicial or quasi-judicial capacity but in a purely administrative capacity. The Supreme Court opined that the Council was “under a duty to act judicially at the stage of ascertaining objectively the facts as to incapacity or misconduct” and that not having acted judicially (in the sense of holding a hearing after notifying the grounds of complaint) the order terminating the respondent’s appointment would be quashed.

In common, the rules of natural justice can be summarised as follows:

- The right to know the charges being faced¹²²
- The right to be heard in one’s own defence before the decision is made¹²³
- The right to an unbiased decision-maker
- The right to know the reason for the decision-maker’s decision (This is not a general requirement but applies in circumstances where it would be unfair not to give reasons, for example, where a decision has serious consequences such as loss of livelihood or where it is necessary to know the grounds of a possible appeal¹²⁴).

Essentially, this means that any disciplinary or grievance procedure of an academic staff member should be conducted by an individual or group not previously involved in the issue and that this individual or body should provide the relevant parties an opportunity to fully state the case and answer any charges or criticisms, whether by the staff member concerned or by his representative, before a decision is

reached. In addition, the case should be treated as expeditiously as reasonably practicable. Moreover, the academic staff member concerned should know his right to appeal against the body's decision.

12.16 Conclusion

From the previous discussion, one can arrive at the following conclusions:

- The academic staff members in England have freedom within the law to question and test received knowledge and to put forward new ideas and debatable or unpopular opinions without placing themselves at risk of losing their jobs or privileges.
- The academic staff members in England have rights that include salary, promotion, holidays, resignation, and retirement.
- The university does not specify any terms or conditions relating to hours of work for the members of academic staff.
- In 1988, the disciplinary and grievances procedures became laws by the university commissioners which gave the pre-1992 universities the right to dismiss members of the academic staff on the grounds of redundancy and divested the jurisdiction of the University Visitor with respect to any dispute relating to an academic or

academic-related staff member concerning appointment or employment. The court has jurisdiction over such disputes. (The University Visitor is discussed in next chapter.)

- The system of higher education in England does not identify the contravention that led to dismissal of academic staff but defines *good cause* even in qualifications, capabilities, and misconduct.
- If there is good cause, certain procedures must be followed that start at an oral warning, progress to a written warning, and, finally, deliver the matter to be heard by a Tribunal where there is intent to dismiss the staff member by good cause.
- There are forms in which the contractual relationships between the university and the academic staff members can be terminated under the Employment Rights Act 1996, such as, frustration, termination with or without notice, repudiation, termination by mutual agreement, fixed-term contract, constructive dismissal, and where the academic staff leaving early.
- The members of academic staff enjoy protection against dismissal where the matter is with public interest according to the Public Interest Disclosure Act 1998.
- If the academic staff member is not able to work because of illness, the university has the right to dismiss him on

medical grounds.

- The members of academic staff have the right to appeal decisions relating to their dismissal.
- There is a grievance procedure to be followed when academic staff members seek to do so.
- All the procedures relating the disciplinary and grievances of academic staff members considered the rules of natural justice, such as, the right to know the charges being faced, to be heard, to appear before an unbiased decision-maker, and to know the reason for the decision.

Notes – Chapter 12

¹ *Halsbury's Laws of England: Education*, vol. 15, para. 265, p. 231.

² Education (No.2) Act 1986, Section 43 (1). This Section applies to any university.

See Section 43 (5/a).

³ Ibid. Section 43 (2).

⁴ Ibid. Section 43 (6).

⁵ Ibid. Section 43 (3).

⁶ Ibid. Section 43 (3/a).

⁷ Ibid. Section 43 (3/b).

⁸ Ibid. Section 43 (4).

⁹ Statute 62 (1/1) of the Statutes of the University of Newcastle upon Tyne; Statute 23 (1/a) of the Statutes of the University of Surrey; Statute 39 (1/a) of the Statutes of the University of Durham; and Section 29, Statute 1 (a) of the Statutes of the University of Sheffield.

¹⁰ The University of Newcastle upon Tyne home page

<http://www.ncl.ac.uk/internal/hr/csprof.html>

¹¹ Ibid.

¹² Ibid.

¹³ Staff who are or become members of the USS will be contracted-out of the State Earnings Related Pension Scheme (SERPS) and will pay National Insurance contributions at a lower rate than those who are not members.

¹⁴ Three years after Section 202 of ERA 1998 came into force, Schedule 11, para. 3 (1) of ERA 1988.

¹⁵ Ibid. para. 3 (2).

¹⁶ ERA 1988, Section 202 (2) (a).

¹⁷ Ibid. Section 202 (2) (b).

¹⁸ Ibid. Section 202 (2) (c).

¹⁹ Ibid. Section 204 (1).

²⁰ According to Section 203 (7) of ERA 1988, *appropriate*, in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution.

²¹ According to Section 203 (7) of ERA 1988 *dismiss* and *dismissal*

(a) Include remove or, as the case may be, removal from office

(b) In relation to employment under a contract, must be construed in accordance with Section 55 of the Employment Protection (Consolidation) Act 1978.

²² According to Section 203 (4) of ERA 1988, any reference to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the commissioners, so similar to those of academic staff as to justify their being treated as academic staff.

²³ Ibid. Section 204 (9).

²⁴ Ibid. Section 205 (2).

²⁵ Ibid. Section 205 (3).

²⁶ Ibid. Section 205 (4).

²⁷ Ibid. Section 205 (5).

²⁸ Section 29, Statute (5) of the University of Sheffield's statutes; Statute 23 (5) of the University of Surrey's statutes; Statute 62 (5) of the University of Newcastle upon Tyne's statutes; and Statute 39 (5) of the University of Durham's statutes. See also Section 203 (6) of ERA 1988.

²⁹ Section 98 of EmpRA 1996.

³⁰ *Vokes Ltd v. Bear* (1973) IRLR 363.

³¹ *Cresswell v. Inland Revenue* (1984) IRLR 190.

³² D. J. Farrington, *The Law of Higher Education*, 1994, p. 292.

³³ See *Singh v. London County Bus Services* (1976) IRLR 176.

³⁴ *Farnborough v. The Governors of the Edinburgh College of Art* (1974) IRLR 245.

³⁵ This court is abolished.

³⁶ Section 29, Statute (6) of the University of Sheffield's statutes; Statute 23 (6) of the University of Surrey's statutes; Statute 62 (6) of the University of Newcastle

upon Tyne's statutes; and Statute 39 (6) of the University of Durham's statutes.

³⁷ Subsection 2 of Article 204 of ERA 1988 is as follows:

Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of section 203(1)(a) of this Act should not apply in relation to a person unless

(a) his appointment is made, or

(b) his contract of employment is entered into, on or after 20th November 1987; or he is promoted on or after that date.

³⁸ Section 221 of ERA 1988.

³⁹ *Pearce v. University of Aston (No.2)*, (1991) 2 All ER 469. See also *Pearce v. University of Aston (No.1)*, (1991) 2 All ER 461.

⁴⁰ See *Stevenson v. Teesside Bridge and Engineering* (1971) 1 All ER 296.

⁴¹ *O'Brien v. Associated Fire Alarms* (1968) 1 W.L.R.1916.

⁴² *Johnson v. Nottinghamshire Police Authority* (1974) I.C.R.170, at p.176.

⁴³ See *Cowen v. Haden* (1983) I.C.R.1.

⁴⁴ *North Yorkshire County Council v. Fay* (1986) I.C.R.133

⁴⁵ For example, see S. 1 1994 no. 1450 She. 7, and the model articles of government in S. 1 1992 no. 1963.

⁴⁶ Section 29, Statute (13/2) of the University of Sheffield's statutes; Statute 39 (13/b) of the University of Durham's statutes; Statute 62 (13/2) of the University of Newcastle upon Tyne's statutes; and Statute 23 (13/2) of the University of Surrey's statutes.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Section 29, Statute (14/1) of the University of Sheffield's statutes; Statute 23 (14/1) of the University of Surrey's statutes; Statute 62 (14/1) of the University of Newcastle upon Tyne's statutes; and Statute 39 (14/a) of the University of Durham's statutes; *Italics mine*.

⁵¹ Section 29, Statute (14/2) of the University of Sheffield's statutes; Statute 23 (14/2) of the University of Surrey's statutes; Statute 62 (14/2) of the University of Newcastle upon Tyne's statutes; and Statute 39 (14/b) of the University of Durham's statutes.

⁵² Section 29, Statute (15/1) of the University of Sheffield's statutes; Statute 23 (15/1) of the University of Surrey's statutes; Statute 62 (15/1) of the University of Newcastle upon Tyne's statutes; and Statute 39 (15/a) of the University of Durham's statutes.

⁵³ Section 29, Statute (15/2) of the University of Sheffield's statutes; Statute 23 (15/2) of the University of Surrey's statutes; Statute 62 (15/2) of the University of Newcastle upon Tyne's statutes; and Statute 39 (15/b) of the University of Durham's statutes.

⁵⁴ Section 29, Statute (15/3) of the University of Sheffield's statutes; Statute 23 (15/3) of the University of Surrey's statutes; Statute 62 (15/3) of the University of Newcastle upon Tyne's statutes; and Statute 39 (15/c) of the University of Durham's statutes.

⁵⁵ Section 29, Statute (15/4) of the University of Sheffield's statutes; Statute 23 (15/4) of the University of Surrey's statutes; Statute 62 (15/4) of the University of Newcastle upon Tyne's statutes; and Statute 39 (15/d) of the University of Durham's statutes.

⁵⁶ Section 29, Statute (16) of the University of Sheffield's statutes; Statute 23 (16) of the University of Surrey's statutes; Statute 62 (16) of the University of Newcastle upon Tyne's statutes; and Statute 39 (16) of the University of Durham's statutes.

⁵⁷ Section 29, Statute (17) of the University of Sheffield's statutes; Statute 23 (17) of the University of Surrey's statutes; Statute 62 (17) of the University of Newcastle upon Tyne's statutes; and Statute 39 (17) of the University of Durham's statutes.

⁵⁸ *Clarke v. Trimoco Motor Group* (1993) I.C.R. 237, at p.248

⁵⁹ *Vidyodaya University Council v. Silva (P.C.)* (1965) 77 1 W.L.R. and *Cheall Vapex* (1983) 2 AC 180.

⁶⁰ See *Coin v. Leeds Western Health Authority* (1990) IRLR 168.

⁶¹ See *Procter v. British Gypsum* (1991) IRLR 7.

⁶² See *Parr v. Whitbread & Co.* (1990) I.C.R. 427.

⁶³ *Paul v. East Surrey District Health Authority* (1995) IRLR 305.

⁶⁴ Section 29, Statute (18) of the University of Sheffield's statutes; Statute 23 (18) of the University of Surrey's statutes; Statute 62 (18) of the University of Newcastle upon Tyne's statutes; and Statute 39 (18) of the University of Durham's statutes.

⁶⁵ Section 29, Statute (20) of the University of Sheffield's statutes; Statute 23 (20) of the University of Surrey's statutes; Statute 62 (20) of the University of Newcastle upon Tyne's statutes; and Statute 39 (20) of the University of Durham's statutes.

⁶⁶ Section 29, Statute (19) of the University of Sheffield's statutes; Statute 23 (19) of the University of Surrey's statutes; Statute 62 (19) of the University of Newcastle upon Tyne's statutes; and Statute 39 (19) of the University of Durham's statutes.

⁶⁷ Section 29, Statute (4) of the University of Sheffield's statutes; Statute 23 (4) of the University of Surrey's statutes; Statute 62 (4) of the University of Newcastle upon Tyne's statutes; and Statute 39 (4) of the University of Durham's statutes.

⁶⁸ Employment Rights Act 1996, General Note, p. 112.

⁶⁹ See *London Transport Executive v. Clarke* (1981) I.C.R. 355.

⁷⁰ See *Marshould v. Harland & Wolff* (1972) I.C.R. 101.

⁷¹ See *Caledonian Mining Co. v. Bassett* (1987) I.C.R. 425.

⁷² See *British Midland Airways v. Lewis* (1978) I.C.R. 782.

⁷³ See *Marshould (Cambridge) v. Hamblin* (1994) I.C.R. 362.

⁷⁴ See *Nelson v. James Nelson & Sons* (1914) 2 K.B. 770.

⁷⁵ *Dixort v. British Broadcasting Corp.* (1979) I.C.R. 281.

⁷⁶ See *Cillies v. Daniels (Richard) & Co.* (1979) IRLR 457.

⁷⁷ See *Lytlaich v. Reid* (1991) I.C.R. 216, *Tritan Oliver (Special Products) v. Bromage* (E.A.T. 709/91; I.D.S. Brief 511), *Millbrook Furnishing Industries v. McIntosh* (1981) IRLR 309.

⁷⁸ See *British Leyland (UK) v. McQuilken* (1978) IRLR 245.

⁷⁹ See *Western Excavating (E.C.C.) v. Sharp* (1978) I.C.R. 221 at p. 226.

⁸⁰ See *Harrison v. Norwest Holst Group Administration* (1985) I.C.R., 668.

⁸¹ See *Savoia v. Chiltern Herb Farms* (1982) IRLR, 166.

⁸² See *Walker v. Catswold Chine Home School* (1977) 12 I.T.R 342.

⁸³ See *Read Case v. Jackson* (1981) IRLR 312.

⁸⁴ *Thompson v. G.E.C. Avionics* (1991) IRLR 488.

⁸⁵ By Section 43/B, which has been added to the Employment Rights Act 1996 by Public Interest Disclosure 1998.

⁸⁶ Section 29, Statute (22) of the University of Sheffield's statutes; Statute 23 (22) of the University of Surrey's statutes; Statute 62 (22) of the University of Newcastle upon Tyne's statutes; and Statute 39 (22) of the University of Durham's statutes.

⁸⁷ Section 29, Statute (23) of the University of Sheffield's statutes; Statute 23 (23) of the University of Surrey's statutes; Statute 62 (23) of the University of Newcastle upon Tyne's statutes; and Statute 39 (23) of the University of Durham's statutes.

⁸⁸ Section 29, Statute (25) of the University of Sheffield's statutes; Statute 23 (25) of the University of Surrey's statutes; Statute 62 (25) of the University of Newcastle upon Tyne's statutes; and Statute 39 (25) of the University of Durham's statutes.

⁸⁹ Section 29, Statutes 26 & 27 of the University of Sheffield's statutes; Statute 23 (26 & 27) of the University of Surrey's statutes; Statute 62 (26 & 27) of the University of Newcastle upon Tyne's statutes; and Statute 39 (26 & 27) of the University of Durham's statutes.

⁹⁰ Section 29, Statute (28) of the University of Sheffield's statutes; Statute 23 (28) of the University of Surrey's statutes; Statute 62 (28) of the University of Newcastle upon Tyne's statutes; and Statute 39 (28) of the University of Durham's statutes.

⁹¹ Section 29, Statute (29) of the University of Sheffield's statutes; Statute 23 (29) of the University of Surrey's statutes, Statute 62 (29) of the University of Newcastle upon Tyne's statutes; and Statute 39 (29) of the University of Durham's statutes.

⁹² Section 29, Statute (30) of the University of Sheffield's statutes; Statute 23 (30) of the University of Surrey's statutes; Statute 62 (30) of the University of Newcastle

upon Tyne's statutes, and Statute 39 (30) of the University of Durham's statutes.

⁹³ Section 29, Statute (31) of the University of Sheffield's statutes; Statute 23 (31) of the University of Surrey's statutes, Statute 62 (31) of the University of Newcastle upon Tyne's statutes; and Statute 39 (31) of the University of Durham's statutes.

⁹⁴ For more details see Appendices 9-1, 9-2, & 9-3.

⁹⁵ Section 29, Statute (32) of the University of Sheffield's statutes; Statute 23 (32) of the University of Surrey's statutes; Statute 62 (32) of the University of Newcastle upon Tyne's statutes; and Statute 39 (32) of the University of Durham's statutes.

⁹⁶ Section 29, Statute (33/1) of the University of Sheffield's statutes; Statute 23 (33/1) of the University of Surrey's statutes; Statute 62 (33/1) of the University of Newcastle upon Tyne's statutes; and Statute 39 (33/a) of the University of Durham's statutes.

⁹⁷ Section 29, Statute (33/2) of the University of Sheffield's statutes; Statute 23 (33/2) of the University of Surrey's statutes; Statute 62 (33/2) of the University of Newcastle upon Tyne's statutes; and Statute 39 (33/b) of the University of Durham's statutes.

⁹⁸ Section 29, Statute (33/3) of the University of Sheffield's statutes; Statute 23 (33/3) of the University of Surrey's statutes; Statute 62 (33/3) of the University of Newcastle upon Tyne's statutes; and Statute 39 (33/c) of the University of Durham's statutes.

⁹⁹ Section 29, Statute (33/4) of the University of Sheffield's statutes; Statute 23 (33/4) of the University of Surrey's statutes; Statute 62 (33/4) of the University of Newcastle upon Tyne's statutes; and Statute 39 (33/d) of the University of Durham's statutes.

¹⁰⁰ Section 29, Statute (33/5) of the University of Sheffield's statutes; Statute 23 (33/5) of the University of Surrey's statutes; Statute 62 (33/5) of the University of Newcastle upon Tyne's statutes; and Statute 39 (33/e) of the University of Durham's statutes.

¹⁰¹ Section 29, Statute (34) of the University of Sheffield's statutes; Statute 23 (34) of

the University of Surrey's statutes; Statute 62 (34) of the University of Newcastle upon Tyne's statutes; and Statute 39 (34) of the University of Durham's statutes.

¹⁰² Section 29, Statute (35) of the University of Sheffield's statutes; Statute 23 (35) of the University of Surrey's statutes; Statute 62 (35) of the University of Newcastle upon Tyne's statutes; and Statute 39 (35) of the University of Durham's statutes.

¹⁰³ Section 29, Statute (37) of the University of Sheffield's statutes; Statute 23 (37) of the University of Surrey's statutes; Statute 62 (37) of the University of Newcastle upon Tyne's statutes; and Statute 39 (37) of the University of Durham's statutes.

¹⁰⁴ See Term 3 of the Annex (provision as to the Vice-Chancellor) in the statutes of the Universities of Sheffield, Surrey, Newcastle upon Tyne, and Durham.

¹⁰⁵ Annex (provision as to the Vice-Chancellor) in the statutes of the Universities of Sheffield, Surrey, Newcastle upon Tyne, and Durham.

¹⁰⁶ See Term 2 of the Annex (provision as to the Vice-Chancellor) in the statutes of the Universities of Sheffield, Surrey, Newcastle upon Tyne, and Durham.

¹⁰⁷ See Term 4 of the Annex (provision as to the Vice-Chancellor) in the statutes of the Universities of Sheffield, Surrey, Newcastle upon Tyne, and Durham.

¹⁰⁸ For the meaning of *ex-officio*, see Chapter 10.

¹⁰⁹ Statute 24 (1) of the Statutes of the University of Surrey. See also Section 28, Statute 4 of the Statutes of the University of Sheffield.

¹¹⁰ For the meaning of *elected member*, see Chapter 10.

¹¹¹ Statute 24 (2) of the Statutes of the University of Surrey.

¹¹² Section 28, Statute 4 of the Statutes of the University of Sheffield.

¹¹³ Ibid. Note 103, Statute 24 (3).

¹¹⁴ Ibid. Note 103, Statute 24 (4); see also Ibid. Note 104, Section 28, Statute 6.

¹¹⁵ Ibid. Note 103, Statute 25 (2).

¹¹⁶ Ibid. Note 104, Section 28, Statute 7.

¹¹⁷ Statute 60 (2) of the Statutes of the University of Newcastle upon Tyne.

¹¹⁸ Ibid. Statute 60 (3).

¹¹⁹ Statute 38 (1) of the Statutes of the University of Durham.

¹²⁰ Ibid. Statute 38 (2).

¹²¹ *Vidyodaya University Council v. Silva* (P.C.) (1965) 77 1 W.L.R

¹²² Ibid.

¹²³ Ibid.

¹²⁴ *R. v. Higher Education Founding Council* (1994) 1 All ER 657. also, *Stefan v.*

General Medical Council (1999) 1 WLR 1293, and *R v. Civil Service Appeals Board ex parte Cunningham* (1991) 4 All ER 249.

Chapter 13:

The Visitor

This chapter deals with the University Visitor in England to determine this legal position with regard to both judicial authority and legal procedure. This chapter is divided into three sections:

1. Historical Background
2. Visitor's appointment, dismissal, powers, duties, and relationship with the court.
3. conclusion

13.1 Historical Background

The historical background of the Visitor dates back, originally, to medieval times. The position of Visitor can be compared with the modern statutory office of prison Visitor, whose role is similar to some extent¹. In addition, the form of the University Visitor derived from the form of the local Visitor, which Henry VIII adopted to supervise his newly founded cathedrals². This means that the aim of the Visitor's appointment was to exercise a supervisory power given to him by the founder over his foundation. This historical origin has been described by Bridge: "In origin the visitor appears to have been an ecclesiastical institution for the purpose of supervising the government of the church and the correction of offences at both diocesan and parochial levels³".

The eleemosynary corporation established for the perpetual

distribution of the free alms or bounty of the founder⁴ has a Visitor appointed by the founder with a special power to supervise and determine affairs relating to that corporation to ensure that the governing body of the corporation obeys the statutes given to it by the founder. Therefore, there is no reason to distinguish between the Visitor of eleemosynary (charitable) and ecclesiastical corporations. Hence, the most modern universities that have been founded by Royal Charter and are eleemosynary corporations⁵ have a Visitor. The Universities of Oxford and Cambridge are not eleemosynary corporations⁶ and not subject to the jurisdiction of a Visitor; instead, they are civil corporations subject to the control of common law exercised through the court⁷. However, the Colleges of Oxford and Cambridge are eleemosynary corporations and subject to the jurisdiction of a Visitor.

13.2 The Visitor's Appointment, Dismissal, Powers, Duties and Relationship with the Court

Who is the Visitor? The Visitor exercises a visitatorial power that enables him to settle disputes between members of the charitable corporation, whether it is ecclesiastical or lay⁸; to inspect and regulate their actions and behaviour; and generally to correct all abuses and irregularities in the administration of the charity⁹.

13.2.1 The University Visitor

The common rules of establishment of corporations usually

appoint the founder as the Visitor of the corporation unless the founder himself chooses to appoint some other person¹⁰. Accordingly, the Crown as founder of the university having created it by Royal Charter is normally the Visitor. This fact is confirmed by the majority of universities' charters, which nominate the Crown as Visitor, either in person¹¹ or through the Lord President of the Council¹². However, in some other universities the royal founder has appointed another person to be Visitor, such as, the Lord Bishop of Durham in the University of Durham¹³.

13.2.2 When the Visitor Is Not Appointed

In a number of recently established universities, no appointment of Visitor has been made by the charter. In these cases, the Crown as the founder of the university is the Visitor and the visitatorial powers are exercised by the Lord Chancellor or such other person as he may advise Her Majesty to nominate on behalf of the Crown¹⁴. In some other universities, however, the Royal founder reserves the power of appointment of the Visitor; this power is exercised by the governing body of the university¹⁵.

This fact had been confirmed by old judgement in the case of *Philips v. Bury*¹⁶, when Holt CJ said that "...if there be no Visitor appointment by the founder, I am of opinion that the law doth appoint the founder and his heirs to be Visitor". Also, in the case of *Attorney-General v. Dedham School*, Sir John Romilly said,

Wherever the Crown founds a charity, this court

treats the Crown as the permanent authority and Visitor of the charity, unless where the Crown has thought fit to appoint a special Visitor and in these cases, it is necessary to apply to the Lord Chancellor, by petition, in his visitatorial character, to exercise jurisdiction on behalf of the Crown as Visitor¹⁷.

In conflict, in the case of *R v. Aston University Senate, ex parte Roffey*, the court did take jurisdiction on grounds that no appointment had been made for the Visitor¹⁸; but this is absolutely wrong. The fact is that when no appointment has been made for the Visitor, the founder (Crown) is the Visitor. Thus, it may be concluded that the appointment of the Visitor in charitable universities is not obsolete but can be used if necessary¹⁹.

It should be noted, however, that the new universities which acquired the title *university* under Section 77 of FHEA 1992 were not created by Royal Charter and, thus, have no provision for a Visitor.

13.2.3 Dismissal of the Visitor

Although, the Visitor existed in most English universities since their charters, these charters do not include a procedure for dismissal of the Visitor. In addition, there is no single case dealing with the dismissal of a Visitor. Consequently, we have to go back to the legal basis that the person who has the power to appoint has the power to dismiss. Hence, if the Crown has the power to appoint the Visitor

without any conditions, then the Crown also has the power to dismiss him without any conditions.

13.2.4 Power and Duties of the Visitor

Because the founder may delegate the visitatorial power wholly or partially to any other person, the form of Visitor can be general or special.

The general Visitor is a personal appointment, in general terms having the same jurisdiction as the founder unless his powers are restricted²⁰. The special Visitor's appointment is for particular purposes, and his jurisdiction is limited according to these purposes²¹.

The Visitor is special or general depending on the terms of his appointment. For example, in the case of *St. John's College, Cambridge v. Todington*, Lord Mansfield said "... it must be collected from the whole purview of the statutes [of the corporation] considered together, what power the founder meant to give the Visitor" ²².

The powers of the Visitor in most English charitable universities are that the Visitor "may inspect the University, its buildings, laboratories, and general work, equipment, and also the examination, teaching and other activities of the University"²³. However, in recently established universities, there is no express qualification of the Visitor's powers in their charters or statutes; but the Crown reserves the right to appoint the Visitor and give him such power as the Crown thinks fit. The Crown will be able when exercising this power to

appoint either a general or special Visitor. In the event of appointment of the general Visitor, there may also be a special Visitor for a particular purpose, this purpose being excluded from the powers of the general Visitor²⁴. In general, the visitatorial powers may be divided among a number of special Visitors, each appointed for special purpose²⁵.

A general Visitor may exercise his jurisdiction on his own initiative in charitable universities; for example, the charter provides that the Visitor may inspect the university from time to time in such manner, as he thinks fit²⁶. A general Visitor may also exercise his jurisdiction upon the receipt of a petition²⁷; complaints and appeals of individual members of the corporation where he may decree an appropriate remedy²⁸ include award of damages²⁹. Thus, there is clearly no limitation on his personal power of visitation; but where a charter provides that visitations on the initiative of the Visitor should only be made at specified periods, then any attempted visitation at other than those periods would be void because the Visitor must act in accordance with the powers given to him³⁰. Thus, the Visitor has exclusive jurisdiction over a dispute between a university and a member of its academic staff over matters concerning questions of the domestic laws of the university³¹.

However, the exclusivity of the jurisdiction of the Visitor over a member of academic staff may be modified by statute. For example, the jurisdiction of the Visitor in relation to a member of the academic staff has been modified by Section 206 of the ERA 1988 which

provides that, the Visitor of qualifying institution³² has no jurisdiction in respect to any dispute relating to a member of the academic staff including academic-related staff³³ which concerns his appointment or employment or the termination of his appointment or employment³⁴; but the court does have jurisdiction over such disputes³⁵. This does not, however, apply in relation to any dispute that is referred to the Visitor before the later of ³⁶:

- the relevant date, which means the date on which the statutes of the institution include such a provision³⁷ as mentioned in Section 203 (1/d and e) of ERA 1988 or
- the date on which Section 206 comes into force (July 29, 1988)

From the above, there is clear evidence that a member of the university other than of the academic or academic-related staff is still under the jurisdiction of the Visitor with respect to any dispute relating to appointment or employment. Examples of university members are the Chancellor, Pro-Chancellors, Vice-Chancellor, Treasurer, Pro-Vice-Chancellor, University Secretary and Registrars and students.

In the case of *Pearce v. University of Aston in Birmingham*³⁸, Dillon LJ gave a powerful judgment when he said,

In my judgment, [Subsections 1 and 2 of Section 206 of ERA 1988] have to be read together, and so read their effect is that until the relevant date the Visitor has exclusive jurisdiction as before to hear

and determine such disputes. After the relevant date, the new procedure determined by the commissioners will apply, unless there has been a reference to the Visitor before the relevant date.

But the court has no jurisdiction before or after the relevant date save by way of judicial review...

The above fact, however, does not prevent the Visitor of a university from hearing or determining appeals, or from hearing or redressing grievances of academic staff in relation to matters other than appointment or employment, in accordance with the procedures established in pursuance of ERA 1988 Section 203 (1) (d) and (e)³⁹. (These procedures were explained the last chapter.) This fact has also been confirmed by the Queen in the complaint of the Dr. Colman against Leicester University. In this case, the Queen ruled that Dr. Colman's concerns should be addressed through the established grievance procedures since the Visitor "should not be invoked until all the avenues provided for under the university's own procedures have been exhausted"⁴⁰.

13.2.4.1 Visitor's Power to Settle Questions

The Visitor's jurisdiction is referred to as a domestic jurisdiction, which includes not only the interpretation and enforcement of the internal laws of the foundation, but also the internal powers and alternatives derived from the internal laws including questions of fact, such as, the alternative confer on those who exercise disciplinary functions over foundation members⁴¹.

In Thomas's case⁴², Lord Griffiths cited as having long been accepted as authoritative, argument of Sir Samuel Romilly in *ex parte Kirkby Ravensworth Hospital*, stating that, "A Visitor is ... a Judge, not for the single purpose of interpreting laws, but also for the application of laws, that are perfectly clear: requiring no interpretation; and farther, for the interpretations of questions of fact; involving no interpretation of laws" ⁴³.

The Visitor's jurisdiction extends over the university members⁴⁴; but it may also extend over other persons who claim to enforce rights which they enjoy under the internal laws of such university⁴⁵. Although, the Visitor's jurisdiction extends over the members of the university, he has no power to make specific performance of an agreement between the university and other parties⁴⁶. Moreover, a Visitor is not entitled to interfere with the proceedings of the university in matters of internal practices⁴⁷, unless they have been made or exercised improperly⁴⁸. Another situation that can restrict the Visitor's power is that he cannot be judge in his own cause, nor he can modify the general constitution of the university, based on the principle that the same person cannot be Visitor and visited⁴⁹. The Visitor's decisions are also subject to judicial review (discussed later in this chapter).

The Visitor's duties are the settling of questions arising as to the interpretation of the statutes relating to the foundation and to the internal management of a charitable university, such as,

- Abuses in the internal regulation (For example, in the

case of *Thomas v. University of Bradford*⁵⁰, the question whether the University Council had correctly followed its disciplinary procedures in dismissing a Lecturer was a matter exclusively within the jurisdiction of the Visitor.)

- Refusal of the Chairman of a University Convocation to summon a meeting to consider certain matters⁵¹
- Conduct of examinations by a university⁵²
- Election of fellows of a college⁵³
- Removal of members of a university⁵⁴

In addition, a Visitor has power to determine whether a person is entitled to become a university member⁵⁵ and whether a person has been properly removed from membership⁵⁶. A university member refusing to recognise the authority of the Visitor may be removed from his office, whether or not the statutes of the university specifically authorise such power⁵⁷. As such, the university and its members must take the Visitor very seriously and with full regard. This matter has been emphasised recently by the Queen when she expressed her anger that the University of Leicester took more than eight months to respond to the complaint of a university staff member made to her in her capacity as a Visitor. Therefore, she criticised the university for its delay and for failing to take “due regard” of her legal role as its arbiter of disputes. She also criticised the university for “discourtesy”⁵⁸.

13.2.4.2 Procedures and Duties of the Visitor

The Visitor of the university, even if exercising a general or special jurisdiction, does not need to proceed according to the rules of

common law⁵⁹ when dealing with matters prescribed by the statutes that regulate the university. However, in *Thomas v. University of Bradford* (No 2), the jurisdiction of the Visitor was said to be similar to the supervisory jurisdiction that the High Court exercises by way of judicial review⁶⁰.

During the procedure, the Visitor must act judicially and hear all appeals⁶¹ and should cite the interested members to appear before him⁶². Therefore, he should not take action or proceedings against an absent member until he has been cited. The Visitor has the right to decide questions upon written or oral evidence⁶³, whether on oath or otherwise⁶⁴. However, he cannot give his decision without hearing the members concerned or, at least, affording them an opportunity of being heard⁶⁵.

3.2.5 Relationship Between the Visitor and the Court

The court has power over the Visitor by an application for judicial review if a Visitor:

- Exceeds the limits of his visitatorial authority
- Proceeds contrary to his citation
- Inflicts different penalties from those that the statutes prescribe⁶⁶
- Has not acted, declines to act, or acts improperly⁶⁷
- Is compelled to receive and hear an appeal However, the court cannot force him to decide on the appeal if such appeal is brought to him too late⁶⁸ or, logically, where a

person acts as a Visitor without jurisdiction⁶⁹.

Judicial review may also be granted to quash a decision of the Visitor upon abuse of power or if he has acted in breach of the rules of natural justice⁷⁰. Judicial review does not, however, lie to quash the decisions of the Visitor, which taken within his jurisdiction, on questions of either law or fact⁷¹ because the applicable law is not the common law of England but a peculiar or domestic law of which the Visitor is the sole judge⁷².

Even though the university is probably a public body and therefore subject to judicial review, if a matter falls within the jurisdiction of the Visitor, the court will normally require this domestic remedy be exhausted first.

13.3 Conclusion

In view of this study of the Visitor's position, powers, duties, and, finally, his relation to the court, my opinion can be concluded in two points:

13.3.1 In Relation to Whether the University is Public or Private

This study confirmed that the Visitor in most charitable universities in England is the founder of such universities. As the Crown is the founder of the charitable universities, the result is that the Crown is the Visitor. As the Crown is the Head of the State⁷³ the Visitor is a part of the state and has authorities, given by the Crown, over the universities to make sure that the governing bodies of the

universities obey the statutes. Thus, it is clear that there is an official connection between the university and the state. This fact may result in the government exercising a power over a university through the Visitor, whose decision on matters within his jurisdiction is final. This can be strong evidence to support the view that the university is a public body in terms of how much the state controls the university. Another reason, which may confirm the first, is that the method of controlling the Visitor's decisions is the same as that of controlling government decisions—judicial review. From the above analysis, the position of the Visitor reveals that the university is more likely to be treated as a public body.

13.3.2 The Need for Continuing the Visitor's Post in English

Universities

The higher education system in England has taken a step toward restricting the power of the Visitor inside the university. Section 206 of ERA 1988 abolished the Visitor's jurisdiction over the academic staff of the university in respect to any dispute concerning their appointment or employment or the termination of their appointment or employment. His jurisdiction on these points transfers to procedures established in pursuance of Section 203 (1) (d) and (e) of ERA 1988.

In my opinion, one reason for this is the absence of appointment of the Visitor in some universities, which could result in late decisions in the cases concerning academic staff members. However, this step

does not mean that the higher education system in England might abolish the whole Visitor's position and transfer his remaining authority over university members to such provisions provided by the parliament; or to import the paraphernalia of the court in the universities regard a university as microcosm of society at large. Bridge pointed out ⁷⁴ that this fallacy has been thoroughly exposed by Professor H. L. A. Hart and his colleagues who, in his report to the Governance of Oxford University, pointed out that a university has special purposes, functions, and problems to confront that differentiate the academic decision-making processes from those of society at large⁷⁵. Bridge, himself, said, "the institution of Visitor, characterising the corporate nature of university life and emphasising the status of both students and teachers as members of the university, may still have a constructive role to play"⁷⁶. It could be argued that developments since Bridge wrote have significantly weakened the autonomy of British universities, notably by the increased powers given to the Secretary of State in relation to the functions of HEFCE (See Chapter 9). This might make it even more desirable to have an independent mechanism for resolving disputes.

Notes – Chapter 13

¹ D. J. Farrington, *The Law of Higher Education*, 1994, p. 42

² Peter M. Smith, “The Exclusive Jurisdiction of the University Visitor” (1981) 97 2.Q.R., p. 610.

³ J.W. Bridge “Keeping Peace in the University: The Role of the Visitor” (1970) L.Q.R, vol. 86, p. 532. See also Smith above note 2.

⁴ *Halsbury’s Laws of England*, 4th ed. vol. 5, para. 212, p. 153.

⁵ *Ibid.*

⁶ *R v. Vice-Chancellor of Cambridge* (1765) 3 Burr 1647. See also *Patel v. University of Bradford Senate* (1978) 3 All ER 841.

⁷ J.W. Bridge, *op. cit.*, p. 532.

⁸ *Ibid.*

⁹ *Patel v. University of Bradford Senate* (1978) 3 All ER 841.

¹⁰ *Eden v. Foster* (1726) 2 P. Wms. 325, (*English Reports*, vol. 24, Chancery).

¹¹ For example, the University of Exeter (Article 6 of its Charter) and the University of Bristol (Article 2 of its Charter).

¹² See Article 3 of the charters of the Universities of Sheffield, Hull, Liverpool, and Southampton.

¹³ University of Durham, Statute 5 of its statutes.

¹⁴ *Thomas v. University of Bradford* (1987) 1 All ER 834; *Patel v. University of Bradford Senate* (1978) 3 All ER 84; see also the Statutes of the University of Newcastle upon Tyne, Section 5.

¹⁵ University of Surrey, Charter, Article 32; University of Essex, Charter, Article 32.

¹⁶ *Philips v. Bury* (1694) Holt KB, 715 at 723, (*English Reports*, vol. 90, King’s Bench).

¹⁷ *Attorney-General v. Dedham School* (1857) 23 Beav 350, (*English Reports*, vol. 53, Rolls Court).

¹⁸ *R v. Aston University Senate, ex parte Roffey* (1969) 2 All ER 964, DC.

¹⁹ J.W. Bridge, op. cit., p. 537.

²⁰ *St. John's College, Cambridge v. Todington* (1757) 1 Burr 158, (*English Reports*, vol. 97, King's Bench). See also *Attorney-General v. Talbot* (1748) 1 Ves Sen 78, (*English Reports*, vol. 27, Chancery).

²¹ Ibid.

²² Ibid.

²³ University of Exeter, Charter, Article 6; University of Bristol, Charter, Article 2; University of Sheffield, Charter, Article 3. J.W. Bridge, op. cit.

²⁴ Ibid. Note 20.

²⁵ *Attorney-General v. Middleton* (1751) 2 Ves Sen 327, (*English Reports*, vol. 28, Chancery).

²⁶ University of Sheffield, Charter, Article 3; University of Exeter, Charter, Article 6.

²⁷ *The King v. Bishop of Ely* (1788) 2 T.R. 290, (*English Reports*, vol. 100, King's Bench).

²⁸ Op. cit. Note 16.

²⁹ *Thomas v. University of Bradford* (1987) 1 All ER 834, HL, per Lord Griffiths, disapproving dictum of Lord Hailsham of St Marylebone LC in the case of *Casson v. University of Aston in Birmingham* (1983) 1 All ER 88, Visitor.

³⁰ *Philips v. Bury* (1692) 2 T.R., per Holt C.J. 348, (*English Reports*, vol. 100, King's Bench).

³¹ *Page v. Hull University Visitor* (1993) 1 All ER 97.

³² According to ERA 1988, Section 202 (3), the following are qualifying institutions:

any university or other institution to which, during the period of three years

beginning 1 August 1987, grants in aid are or have been made by the Universities

Funding Council, or by the Secretary of State acting on the advice of the University Grants Committee;

any constituent college, school or hall or other institution of a university falling within paragraph (a) above; and

any institution not falling within paragraph (a) above which is authorised by charter

to grant degrees and to which, during the period of three years beginning 1 August 1987, grants are or have been made by the Secretary of State.

³³ According to Section 203 (4) of ERA 1988, academic-related staff are persons whose terms of appointment or contracts of employment are in the opinion of the commissioners, so similar to those of academic staff as to justify their being treated as academic staff.

³⁴ Section 206 (1) of ERA 1988.

³⁵ *Pearce v. University of Aston in Birmingham* (1991) 2 All ER 461, CA.

³⁶ Section 206 (2) of ERA 1988.

³⁷ Discussed in Chapter 12.

³⁸ Ibid. Note 35.

³⁹ ERA 1988, Section 206 (3).

⁴⁰ Article written by Phil Baty under the title of (The Queen takes Leicester to task), *The Times Higher*, October 8, 1999, p. 7.

⁴¹ *Halsbury's Laws of England*, vol. 5 (2), para. 416, p. 271.

⁴² Op. cit. Note 14.

⁴³ *Ex parte Kirkby Ravensworth Hospital*, (1808) 15 Ves. Jun. 305, (*English Reports*, vol. 33, Chancery).

⁴⁴ *Hines v. Birkbeck College* (1986) 3 All ER 156.

⁴⁵ *Oakes v. Sidney Sussex College, Cambridge* (1988) 1 All ER 1004.

⁴⁶ *R v. Windham* (1776) 1 Cowp 377, (*English Reports*, vol. 98, King's Bench).

⁴⁷ *Ex parte Wrangham* (1795) 2 Ves. Jun. 610, (*English Reports*, vol. 30, Chancery).

⁴⁸ *The Queen v. Hertford College* (1878) 3 QBD 693.

⁴⁹ Ibid.

⁵⁰ Op. cit. Note 14.

⁵¹ *R v. Dunsheath, ex parte Meredith* (1950) 2 All ER 741.

⁵² See *R v. Her Majesty The Queen in Council, ex parte Vijayatunga* (1990) 2 QB 444, sub nom *R v. University of London Visitor, ex parte Vijayatunga* (1989) 2 All ER 843, CA.

⁵³ Op. cit. Note 20.

⁵⁴ Op. cit. Note 31.

⁵⁵ Op. cit. Note 20.

⁵⁶ Op. cit. Note 14.

⁵⁷ *Philips v. Bury* (1694) Skin 447 HL, (*English Reports*, vol. 90, King's Bench).

⁵⁸ Phil Baty, op. cit., p. 7.

⁵⁹ Op. cit. Note 27.

⁶⁰ *Thomas v. University of Bradford (No. 2)*, (1992) 1 All ER 964.

⁶¹ Ibid. Note 52.

⁶² *The King v. Cambridge University* (1723) 8 Mod 148, (*English Reports*, vol. 88, King's Bench).

⁶³ *The King v. Bishop of Ely* (1794) 5 T. R. 475, (*English Reports*, vol. 101, King's Bench).

⁶⁴ *Halsbury's Laws of England*, 4th ed. vol. 5(2) para 419 p. 274.

⁶⁵ Op. cit. Note 27; Ibid. Note 62.

⁶⁶ *Bishop of Ely v. Bentley* (1732) 2 Brown. Cas 220, HL, (*English Reports*, vol. 1, House Of Lords).

⁶⁷ *The King v. Bishop of Worcester* (1515) 4 M & S 415, (*England Report*, vol. 105, King's Bench).

⁶⁸ Op. cit. Note 63.

⁶⁹ *The King v. Bishop of Chester* (1748) 1 Black. W. 22, (*English Reports*, vol. 96, King's Bench).

⁷⁰ Op. cit. Note 31; op. cit. Note 52.

⁷¹ Apart from the abnormal case of the Visitor, any error of law made by an administrative Tribunal or inferior court may be a ground for quashing the decision on judicial review: *O'Reilly v. Mackman* (1982) 3 All ER 1124, HL; *Page v. Hull University Visitor* (1993) 1 All ER 97.

⁷² Op. cit. Note 31. See also op. cit. Note 20 and op. cit. Note 16.

⁷³ Discussed in detail in Chapter 11.

⁷⁴ J. W. Bridge, op. cit., p.550.

⁷⁵ Cited by J.W. Bridge, Ibid.

⁷⁶ J. W. Bridge, op. cit., p. 551.

Summary and Conclusions

14.1 Definition of the University

This research has found no clear statutory definition of *university* in England, but it has made clear that all institutions, whether they are universities, colleges, or corporate bodies, that grant any course from Schedule 6 in ERA 1988 (Courses of Higher Education) must fall under the higher education sector.

The only definition I found during this study regarding a university in England follows: In England, *university* means a body providing higher education under a charter granted by the Crown or Parliament and awarding degrees recognised in the professional world.

In contrast, Saudi Arabia has developed a statutory definition of *universities* as scientific and cultural institutions, working within Islamic law and enforcing the educational policy by offering academic education, postgraduate studies, set-up of scientific research, authorship, translation, publication, and community service, in extent of their competence.

Several conclusions can be drawn from these definitions that will be addressed in the following sections.

14.1.1 A Scientific and Cultural Institution

This study has found that the Saudi system agrees with the English system in respect of the university being a scientific and

cultural institution, that is to say the university must provide higher education. However, they differ with respect to universities in Saudi Arabia being based upon Islamic code and English universities being based upon secularism. In addition, a university in Saudi Arabia must execute the general educational policy of the state, whereas, in England this is not as clear. Although, in theory, each university can determine its own policy, in practice, the Secretary of State for Education determines policy through his power to allocate funding to universities through HEFCE.

14.1.2 The Power to Award Degrees

As we have seen, the power to award degree is one of the important criteria for distinguishing between universities and other institutions in England. Still, other powers are key to defining *university* in England since other institutions have the power to award degrees but are not necessarily universities. The same situation exists in Saudi Arabia; however, the Higher Education Council has the power to give the university and other institutions the right to grant degrees.

14.1.3 The Instrument Establishing the University

The universities in Saudi Arabia are created by royal decree and must be subject to Higher Education and University Act. The private universities must be created with consent of the Higher Education Council which has the power to recognise the regulations and rules

for establishing this kind of university and licensing and supervising them.

In the English system, universities can be established three different ways.

1. By the grant of a charter in the exercise of the Royal prerogative
2. By statute (Act of Parliament)
3. By registration under the Companies Acts

In all cases, English universities fall within the higher education sector and are subject to ERA 1988 and FHEA 1992. The only private university in England is Buckingham because it does not receive any government funding.

14.2 University Governance

This study has determined that the government of a university within the Saudi Arabia system is very clear and organised; it is hierarchical and determined by the general law. A university's government is the University Council of each university. The Higher Education Council, which is the highest power within the system, controls the affairs of all Saudi universities. The university administration in Saudi Arabia is run by the University Council on which the Ministry of Education is represented, University Chancellor, and Deputies of the University. Comparing these bodies with those of English universities' should point out the similarities and dissimilarities of both systems.

The way universities are administrated in the English system depends upon the university's classification. For universities established before 1992, the Court, Council, and Senate administrate the universities (not including the Universities of Oxford and Cambridge). Their officers are the Chancellor, Pro-Chancellor, Treasurer, Vice-Chancellor, Pro-Vice-Chancellor, and Registrar. The Board of Governors and Academic Board administrate universities established after 1992. Their officers are the Chancellor (in some universities), Chairman of the Board of Governors, head of the institution, Pro-Vice-Chancellor, and Secretary of the Board of Governors.

14.3 Academic Staff

14.3.1 Definition of Academic Staff Members

In England, it is clear that no laws, including FHEA 1992 and ERA 1988, define the meaning of *academic staff* or their categories for universities. The meaning and categories of academic staff and their conditions for service have been left for the internal statutes of each university to determine.

In general, *academic staff* at English universities means all persons holding full-time appointments as Professors, Readers, Senior Lectures, Lecturers of the University, and such other persons or holders of appointments as the Council of each university, at the Senate's recommendation, may from time to time stipulate.

In Saudi Arabia, ROATS 1997 makes it clear that the teaching

staff members are the Professors, Participating Professors, and Assistant Professors. In addition, Lecturers, Tutors, Language Tutors, and Research Assistants must be considered members of the teaching staff. Thus, all who work on the teaching staff at Saudi Universities are considered “members of teaching staff”, and ROATS 1997 must be applied to them.

14.3.2 Appointment of the Academic Staff

Appointments for members of the academic staff in Saudi Arabia universities are according to the recommendations of the Department Council, the Faculty Council, and the Scientific Council for persons with a bachelors, Master’s, or doctorate. The University Council is responsible for issuing the appointment resolutions.

However, at English universities no specific degree is required, but usually a first degree is the minimum requirement appointment such member with special conditions that differ according to the requirements of the particular post. In addition, there must be a contract between the person appointed as an academic staff member and the university that takes into consideration the statutes and other acts or regulations relating to academic staff.

In sum, the appointment of academic staff at English universities is by contract upon permission from the University Council. In the Saudi system, the same regulations must be applied to all members of the academic staff; and the appointment is by an administrative decision. However, if the matter has not been covered

by that regulation, the general law of civil service applies since academic staff members in Saudi Arabia are civil servants unlike those in England.

As discussed in Chapter 11, the exact position of a member of the academic staff at English universities can only be found in the following documents:

- The contract of employment
- The relevant governing instrument, whether it be charter and statutes, Act of Parliament, etc.
- The general law of employment
- The terms of any collective agreement relevant to academic staff

14.3.3 Conditions of Appointment

No general conditions must be applied for appointment of an academic staff member in English universities, that is to say every university has its own conditions, which usually involve the academic staff member's contract and are thus flexible. In my opinion, such flexibility gives the university an alternative to use the staff member as needed. In contrast, Saudi Arabia universities have general conditions for appointing a member of the academic staff; these conditions are similar in each university and cannot be changed (as described in Chapter 4). The Saudi government needs to consider future steps to provide Saudi universities the flexibility to appoint academic staff members by contract so the university can use these members as

needed. Such contracts must take into consideration the regulations and general law relating to members of Saudi university academic staff.

14.3.4 Duties and Rights of the Academic Staff

The academic staff members in Saudi Arabia have general and teaching duties specified by ROATS 1997 as discussed in Chapter 7. In England, however, the staff members have a duty to carry out their work to the best of their ability and to abide by the terms and conditions of their employment, normally listed in detail in their contract. Again this gives English universities greater flexibility.

14.3.5 Retirement

In England, the retirement date is usually September 30 immediately following the staff members' 65th birthday but, varies according to the rules of individual universities. In Saudi Arabia, teaching staff members are referred for retirement upon reaching 60 years of age according to the *hegira* of the Muslim era; but the Higher Education Council has the right, according to the recommendation of the University Director, to extend the service of the teaching staff member for another term or terms until the person reaches age 65.

14.3.6 Salaries

In England, salaries of academic staff members are based upon national scales that universities have voluntarily accepted, with

superannuation benefits, and are payable monthly in arrears. (See Tables 4 and 5.) In Saudi Arabia, the situation is similar. (See Table 1.) In England, the national scale can vary to a certain extent by individual payments; and Professors are subject only to a national minimum.

14.3.7 Holidays

The academic staff members in England have annual holidays with full salary. Such holidays are not less than six weeks in any one year. In Saudi Arabia, teaching staff members have at least eight weeks called summer holidays. These are normally to be taken during university vacations and are subject to the reasonable needs of the university. In addition, there are normal public holidays and other days when the university is officially closed. In Saudi Arabia, these are subject to the civil service disciplinary regulations. Altogether, both systems are similarly subject to the needs of the university.

14.3.8 Resignation and Promotion

The members of academic staff in both countries have the right to resign in writing to University Council. Similarly, the members of the academic staff in both countries have the right to promotion, with each system having its own procedure and conditions for promotion. However, the qualifications for promotion are structured by law in Saudi Arabia. In the United Kingdom, there are structured procedures in the instruments of individual universities; but the promotion

requirements are discretionary.

14.3.9 Disciplinary and Grievance Procedures

In Saudi Arabia, if any member of teaching staff or equivalent is viewed as acting with disregard to his duties or misbehaving and is thus under consideration for disciplinary action, a Dean must conduct an investigation and offer a report of the matter by order of the University Director. The University Director should refer the member to the Disciplinary Committee if he sees the necessity for such action.

However, the academic staff member can make an appeal of the Committee's decision to the University Director within 30 days or the decision will be final. Also, if the Committee does not change its decision after the appeal, the decision is final if approved by the Council. Therefore, the academic staff member cannot make appeal of such decisions to the Board of Grievances because the board does not have jurisdiction over such decisions. Essentially, the board does not have jurisdiction over any committee's decision where it is stated in the regulation that its decision is final.

I believe the legislature should review this point to allow the academic staff member to make appeal before the Board of Grievances. This would be compliant with the doctrine that the University Council has no judicial jurisdiction, only administrative decision. Further research should be encouraged in this case.

In England, however, the academic staff members have the right to appeal according to the procedures available in the university

statutes. However, if such procedures have been exhausted, the Visitor has jurisdiction over such disputes; and his decision is final. If the Visitor abuses his power or acts outside his jurisdiction, then the ordinary court has jurisdiction over the Visitor.

14.4 The Financial Situation of the University

The university revenues in all Saudi universities consist of

- Credits from the state budget
- Donations, grants, etc.
- Revenue and income of university properties and what they may produce
- Revenue of income maintained from other projects of research and studies conducted by the university or other scientific and academic services
- Revenue from the university's right to conduct any studies or scientific services for any Saudi institution for an agreed amount of university revenue
- Donations, presents specially for the university, and conditional donations if the conditions are not against the aims and objectives of university rule

In contrast, the university revenues in English universities consist of

- The Higher Education Funding Council for England (HEFCE), which provides governmental funding
- British and other student fees

- Research councils
- British charities
- Residences and catering
- International student fees
- Government departments (e.g., the Department of Health)
- Consultancies and other services
- Endowments and donations
- Sponsorship of posts
- Interest earned on cash balances and investments
- Income from the exploitation of the results of particular pieces of research or inventions that have commercial applications
- Teaching contracts for specific customers
- Income from short courses

All Saudi universities are corporate bodies with the same rights as a private person. The same position exists in England. Thus, universities in Saudi Arabia and England have the right to buy and sell property and are liable to legal prosecution. The difference is that in Saudi Arabia universities are government bodies and completely subject to the state. However, English universities are self-governed and not subject to the state control theory, although in practice the state has control over individual university through the HEFCE and the Visitor.

Every university in Saudi Arabia has an autonomous budget

considered by royal decision determining revenue and expenditure, which is controlled by the General Control Office. The financial year of the university is the financial year of the state. In contrast, English universities have their own budgets with no state control except for the grant that comes from HEFCE. However, the accounts of British universities are audited by the national audit office, which is responsible to parliament (National Audit Acts 1983, 1993). Hence, we can see how much state control there is over the universities of both countries.

14.5 Suggestions for Further Research

There areas of particular interest for further research have become apparent in this study:

- The nature of the disciplinary procedure of academic staff members at Saudi universities
- The freedom of universities to distribute its research budget in the interested research areas
- The freedoms of academic staff members to put forward new ideas and received knowledge
- The possibility of transferring the relationships between the members of academic staff at Saudi universities from disciplinary to contractual relationships
- The possibility of reorganising and establishing a single code relating the affairs of higher education and universities in England

- The possibility of transferring the contractual relationships between the university and the academic staff members to disciplinary relationships in English universities.
- The future of the Visitor in English universities

Such areas of study, to the knowledge of the present researcher, have not been thoroughly researched yet. Thus, it would be important to direct the attention of those interested in the development of higher education and universities in both countries to these areas. It is hoped that above topics will open up fresh avenues for further research carried out by experienced researchers and post-graduate students equally.

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