IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: DOTSE, JSC PRESIDING
YEBOAH, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC
BENIN, JSC
PWAMANG, JSC

WRIT NO.
J1/1/2016
22ND JUNE, 2017

PROFESSOR STEPHEN KWAKU ASARE ..... PLAINTIFF

VRS

1. ATTORNEY-GENERAL

2. THE GENERAL LEGAL COUNCIL ..... DEFENDANTS

JUDGMENT

GBADEGBE JSC:-

We have before us in the exercise of the original jurisdiction a claim by which the following reliefs are sought:

1. A declaration that the General Legal Council's imposition of an entrance examination and interview requirements for the Professional Law Course violates Articles 11(7), 297(d),23, 296(a), 296(b) and 18(2) of the 1992 Constitution.

2. A declaration that Regulation 3(b) of LI 1296 is void for vagueness and is therefore facially unconstitutional and a further declaration that the Council applied it to disqualify eligible students who had qualified under Regulation 2 of LI 1296 for admission to pursue the Professional Law Course.

3. A declaration that pursuant to Regulation 2 of LI 1296, a person is qualified for admission to pursue Professional Law Course at the Ghana School of Law or other alternative places of instruction specified by the General Legal Council if (a) he is of good behavior; (b) he has a degree conferred on him by the University of Ghana or any other University or Institution approved by the Council, and (c) has passed the examination in the list of 7 subjects specified at Regulation 2 (c).
4. A declaration that the General Legal Council's exclusion of persons who have qualified under Regulation 2 of LI 1296 from pursuing the Professional Law Course violates Articles 11(7),297(d), 23, 296 (a), 296(b) and 18 (2) of the 1992 Constitution.

5. A declaration that the General Legal Council's failure to specify alternative places and mode of instruction for all persons who meet the Requirement for mandatory admission in Regulation 2 of Li 1296, when taken in the light of the Council's duty under section 13 of ACT 32, violates Articles 296 (a), 296(b) and 297(b) of the 1992 Constitution.

6. A declaration that the General Legal Council's policy on reviewing examination scripts and quota violates Articles 23,296(a) and(b) and 18(2) of the 1992 Constitution.

7. An order directing the General Legal Council to specify within 60 days alternative places and modes of instruction that afford all persons meeting the requirement in Regulation 2 of LI 1296 an opportunity to pursue the professional component of the legal education, the completion of which entitles them to take the qualifying certificate examination or examinations, as determined by the Council pursuant to section 13(e) of ACT 32.

8. Any other remedies that this Court deems necessary in the exercise of its legal and equitable powers.

For reasons of convenience, we shall hereafter in this delivery except where reference to the bodies mentioned are contained in a statute or quotation refer to them as follows:

General Legal Council - (the Council), Ghana School of Law - (the School), and University of Ghana- (UG). As the term Professional Law Course may also feature extensively in the judgment, we shall for like reasons conveniently refer to it as (PLC). Before proceeding further, it is observed that the practice whereby the plaintiff exhibited certain documents

to the statement of case filed by him in the matter herein is a departure from the requirements of the Supreme Court Rules, 1996, CI 16 in respect of the original jurisdiction. In particular, by rule 46(1), 2 (a) of the Supreme Court Rules, 1996, CI 16, the plaintiff's obligation in terms of the filing of a statement of case is expressed in the following words:

"(1) the plaintiff may file a statement of case for the plaintiff with the writ or within fourteen days of the filing of the writ file the statement of the plaintiff's case.

(2) The statement of the plaintiff's case shall state,

(a) The facts and particulars, documentary or otherwise, verified by an affidavit, on which the plaintiff seeks to rely;"

In our opinion, the better practice is to state the effect of the facts in the statement of case and by means of an affidavit state precisely the facts giving rise to the action together with exhibits (if any) which lend credence to the facts on which the plaintiff relies to sustain the cause of action. Where in the affidavit, the facts on which reliance is placed are not from the personal knowledge of the plaintiff, then he may refer to the source of his information and by the settled practice of the court in regard to such matters depose to them subject to the use of the technical words or the accepted term of art for example in reference to documents as follows that:

> "I have before me a series of correspondence exchanged between the1st defendant and the 2nd defendant concerning the matters in issue before the court which are contained in a bundle of documents exhibited hereto and marked as GB1 and GB 2 respectively and I am advised by my counsel and verily believe the same to be true that these documents evince a clear violation of article 187 of the constitution which requires to be pronounced upon by the court in the exercise of its original jurisdiction."

A statement of case within the context of the rules seems to be different from the current practice in some jurisdictions such as England where what was formerly known as statement of claim has come to be known as statement of case. In our view, the use of the word statement of case in rule 46 appears to be synonymous with the requirement in the High Court (Civil Procedure Rules), 2005, CI 47 regulating applications for judicial review under order 55 rule 6 and order 25 rule 3 regarding applications for injunctions. In this regard, a statement of case may be likened to an address or speech made by counsel to the court by which are highlighted consequences of law arising from contentious or established facts in respect of which the court's decision is sought. Thus,

it is permissible to refer in outline to the effect of the facts but not the material facts which should be contained in the affidavit so that if the defendant desires to deny the said facts, he may do so by an affidavit filed by him setting out his version of the facts which establish his defence to the action.

A statement of case, it seems from a fair consideration of the rule under reference is not the process by which contested facts are set out; for there can be no effective denial of such matters. As affidavits are used in specified instances when so authorised by rules of court to prove factual matters, the requirement regarding the use of a verifying affidavit is to afford parties the opportunity of dealing with factual matters solemnly with the added sanction of perjury which is not available if they were proceeding for example by way of a statement of claim. the usual way of placing a plaintiff's plaint before the High Court. As proceedings herein have been contested by the parties without regard to the strict requirements of the rules the observations are intended for future guidance only.

In order to fully appreciate the rival contentions of the parties in the action herein, it is important to set them out. The plaintiff's case from the processes filed is anchored substantially on sections 13 and 14 of the Legal Profession Act, (Act 32) and regulations 2 and 3 of Professional Law Course Regulations, 1984, LI 1296. Considering the cumulative effect of these provisions in the light of specified provisions of the constitution, he contends that the present system of legal education operating in the country regarding admission requirements into the Law School by persons who have obtained LL.B degrees from UG and other approved institutions of learning is inconsistent with articles 11 (7), 18(2), 296 (a) and (b) and 297 of the Constitution of 1992 (hereinafter referred to as the Constitution).In particular, he argues that the new requirements introduced by the Council requiring such law graduates to write an examination and attend an interview before being admitted into the School is unconstitutional. Based on the said premise, he seeks 7 declaratory reliefs from us. In order to better appreciate the import of the contentions placed before us by the plaintiff, reference is made in extenso to some of the said statutory and constitutional provisions. As the plaintiff's cause of action is derived primarily from Act 32 and LI 1296, the relevant provisions are set out before the constitutional provisions. It is hoped that the order of listing these provisions in the judgment would not be misconstrued as disrespecting the hierarchy of laws in article 11 of the constitution.

By section 13 of Act 32, it is provided thus:

"(1) it shall be the duty of the General Legal Council to make arrangements-

(a) For establishing a system of legal education,

(b) For selecting the subjects in which those seeking to qualify as lawyers are to be examined,
(c) For establishing courses of instruction for students and generally, for affording opportunities for students to read and to obtain practical experience in the law,

(d) For regulating the admission of students to pursue courses of instruction leading to qualification as lawyer and

(e) For holding examinations which may include preliminary and intermediary examinations as well as final qualifying examinations."

Section 14 of the Act also provides:

"The General Legal Council may by legislative instrument, with the approval of the Minister make regulations concerning all matters connected with legal education and in particular concerning

(a) The conduct of examinations, and the fees to be charged to those sitting for the examinations,
(b) Admission to practice as a lawyer, and
(c) The issue of diplomas to persons who have passed examinations held by them."

In the exercise of the authority conferred on the Council under section 14 of Act 32, LI 1296 was made on January 18, 1984. By regulation 1 of the said legislative instrument, it is provided in regulations 1, 2 and 3 in the following words:

"(1) No person shall obtain the Qualifying certificate referred to in section 13 (3) of the Act, unless he-

(a) has pursued an appropriate course of study in approved subjects extending over not less than two years at the Ghana Law School, Accra,
(b) has satisfied the examiners at the Part 1 and Part 11 of the Qualifying Certificate Examination.

2. (1) A person shall qualify for admission to the Professional Law Course at the Ghana Law School, if-

(a) he is of good behavior;
(b) he has a degree conferred by the University of Ghana or any other University or Institution approved by the Council; and

(c) he has passed final examinations in the following subjects;

(1) Law of Contract;
(2) Law of Tort;
(3) Criminal Law;
(4) Law of Immoveable Property;
(5) Constitutional Law;
(6) The Ghana Legal System and its History; and
(7) Equity and Succession.

(1) For the purposes of this regulation "final examinations" means the final examination held by the University of Ghana or by any other University or Institution approved by the General Legal Council.

(2) A person shall not be eligible for admission to the Professional Law Course if-

(a) he is engaged in any occupation which in the opinion of the Council is incompatible with the position of a student seeking enrolment to be called to the Ghana Bar;

(b) he is for any reason considered by the Council to be unsuitable for admission."

The relevant provisions of the Constitution are:

Article 18(2):

> "No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with the law as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights r freedom of others"

Article 11(7) provides thus:

> "Any Order Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall-
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> (a) be laid before Parliament;
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> (b) shall be published in the gazette on the day it is laid before Parliament; and

(c) come into force at the expiration of the twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament."

Article 23 provides:

"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."

Article 296 (a) and (b) also provide as follows:

"Where in this Constitution or in any other law discretionary power is vested in any person or authority

(a) The discretionary power shall be deemed to imply a duty to be fair and candid;
(b) The exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law."

Article 297 (b) and (d) further provide:

In this Constitution and in any other law-

(b) Where a power is conferred or a duty is imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;

(c) Where a power is conferred to make any constitutional or statutory instrument, regulation or rule or pass any resolution or give any direction, the power shall be construed as including the power, exercisable in the same manner, to amend or to revoke the constitutional or statutory instrument, regulation, rules or direction as the case may be."

It is observed that the constitutional provision in article 23 regarding the exercise of discretionary power is regulated by article 296 and that whenever a violation of the right granted in article 23 is alleged, the proponent must call in aid by way of proof one or more of the incidents specified in article 296 (a) or (b) in order to succeed. Thus when one is considering a breach of the right to administrative justice, the incidents which might bear it out may be discerned from article 296 in terms of its candor, fairness, or absence of arbitrariness, caprice, and or bias. In the circumstances, whenever a breach is alleged of the right conferred in article 23, the trier of fact is required to measure the act or omission on which the allegation is based against the parameters mentioned in article 296 for the purpose of making a determination whether indeed, there has been a breach within the contemplation of article 2(1) of the Constitution. Therefore, a consideration of article 23 implies a consideration of the constitutional standards set out in article 296. The observations made in relation to articles 23 and 296 apply with equal force to the power conferred on persons under article 11 (7) to make constitutional and statutory instruments which power is regulated by article 297 as is the power conferred on the Council under section 14 of Act 32. In considering therefore any allegation touching and concerning breach of article 11(7) of the constitution or the power to make instruments under any other law, the incidents of breach may be inferred from article 297 as it is the provision which all such instruments must conform to in order to have the attribute of legitimacy.

PLAINTIFF'S CASE.

The substance of the claim before us is that students who pursue courses of study leading to the award of LL.B degrees by the UG and other universities or institutions approved by the Council are entitled to be admitted into the School at Makola without any examination or interview contrary to the practice which has come into being since 2015. The plaintiff contends that the said conditions which were introduced by the Council, do not derive their legitimacy from either Act 32 or LI 1296 and to that extent are impositions and unconstitutional. The submission regarding the plaintiff's position is based essentially on sections 13 and 14 of Act 32 and regulations 2 and 3 of LI 1296. According to the plaintiff, the power conferred on the Council to make arrangements for legal education in sections 13 and 14 of Act 32 places an obligation on it to do so by a statutory instrument as was done by LI 1296. That having by means of the required legislation, enacted regulations that grant opportunity to graduates of the UG and other approved universities or institutions approved by it to study law, such students are entitled under the statutory

framework to be admitted to the School without the existing conditions of a qualifying examination and an interview. Closely linked to this is the urging that administrative fiat cannot co-exist as qualification requirements for admission into the School. In the view of the plaintiff, examinations are only provided for in respect of non-law graduates who desire to pursue a course of study to enable them obtain qualifying certificates to be enrolled at the Ghana Bar. In so contending, the plaintiff relies on regulation 16 of LI 1296. According to the plaintiff, a similar provision is made in regulation 23 regarding persons who are qualified to practice law in countries other than Ghana but seek to be enrolled in Ghana.

The gravamen of the plaintiff's complaint regarding the requirements of examination and interview is that the new requirements for admission to the School published to students in the media and through other means of communication is unconstitutional. In his contention, for such directives to be lawful they must be made in the same form as employed in regard to LI1296 by virtue of the statutory authority conferred on the Council under section 14 of Act 32.he failure by the Council to enact the appropriate regulations is said to be in violation of articles 297 (b) and (d), the essence of which provision is to enable the Council to amend or revoke LI 1296 when the need arises for the purpose of making arrangements for legal education in Ghana and consequently a violation of articles 11(7), and 297 of the constitution.

The plaintiff also contends that regulation 3(b) of LI 1296 is vague and permits the Council by resort to it to prevent qualified students from pursuing the PLC. In the words of the plaintiff, the said provision has been used as an excuse, so to say, to deny access to the School of qualified students who have finished the first stage of a two stage training program to become lawyers in Ghana by terminating their legitimate expectations arising from the bifurcated approach inherent in the system of legal education set up under Act 32 and LI 1296 thereby depriving them of the opportunity of entering the School for the purpose of pursuing the practical component of the law course. Regarding such deprivation, the plaintiff alleges that it constitutes a violation of their rights under article 18 (2) of the constitution.

The plaintiff further complains about the failure of the Council to make arrangements in compliance with section 13 of Act 32 and regulation 2 of LI 1296 to establish a system of legal education that would enable students to be admitted to institutions other than the School to further their education beyond graduation. According to the plaintiff, the words by which regulation 2 (1) (b) of LI 1296 are expressed envisages a situation in which as a result of large numbers of students who have pursued a course of study leading to LLB degrees in UG and other approved institutions but who are unable due to

space constraints to enter the School to continue with the second stage of the training in other universities or institutions other than the School in order that they can subsequently be enrolled at the Ghana Bar. This contention, the plaintiff makes by virtue of the fact the new requirements have been made to control the admission of a large number of graduating students from UG and other approved institutions; a practice which it is alleged is contrary to articles 23 and 296 of the Constitution as the means employed namely an examination and interview result in admissions being based on a rigid quota regime that is unfair. The plaintiff reasons that it is a dereliction of duty on the part of the Council to approve several institutions for the training of students in the first stage of the bifurcated legal education program without giving due regard to available facilities in the School. This dereliction of duty according to the plaintiff has compelled the Council to introduce the new requirements since 2015 to stem the tide of large numbers of LL.B graduates who are produced yearly from institutions approved by it. The failure of the Council to make arrangements for all students who successfully complete the first stage of the two stage program to continue the professional course is an omission within the scope of article 297 of the constitution , which requires to be remedied by an order directed at the Council to specify within a specified period alternative places and modes of instruction to enable those who cannot by virtue of space constraints be admitted into the School to pursue the professional component of legal education in the country.

Yet, another aspect of the plaintiff's case regarding section 13 (1) (a) is that by establishing a two-tier system of legal education in the country, the Council has created in the minds of students who gain admission into UG and other approved institutions, an expectation that upon the successful completion of the academic component of the course of study, they will be entitled to be admitted into approved institutions to enable them complete the professional course in order to be admitted to the Ghana Bar. Such an expectation derived reasonably from the nature of the bifurcated system of legal education in the country, has the effect of creating in them a property interest that cannot be interfered with without reasonable notice and the opportunity of being heard before changes are made in the arrangements. Reliance in this regard is placed on a decision of the Supreme Court of the United States in Board of Regents v Ruth [408] US 364 (1972. Such an interference in the rights of students affected by the changes made to the arrangement provided for legal education violates article 18(2) of the Constitution and must be struck down.

Continuing further, the plaintiff makes the assertion that the grading and quota policies inherent in the administrative changes made to the system of legal education are arbitrary and short of the most primitive conception of due process. The pith of plaintiff's argument in support of this complaint is that until after the examinations, students do not know the

pass mark and are at a loss as to what it takes to gain admission into the School contrary to the clear statutory provisions contained in regulations 2and 3 of LI 1296. Also complained of is the denial of the right of students pursuing the PLC to see their examination scripts and the right to have a re-marking in order to prevent examiners from engaging in prejudicial and capricious grading in violation of due process requirements in articles 23 and 296 of the Constitution.

1ST DEFENDANT'S CASE:

In response to the plaintiff's case, the 1st defendant raised the question of jurisdiction which is to the effect that there is no issue of interpretation or enforcement before the court in order to have our original jurisdiction properly invoked. Also, it was urged that the plaintiff not being a person who has been affected by the new requirements, he is not vested with a cause of action to complain of breach or breaches of article 23 which is available only to "persons aggrieved by the exercise of such acts and decisions."

The 1st defendant then proceeded to contend that having regard to the large numbers of students seeking admission to the School, the Council had to introduce the entrance exams and interview, a decision which was communicated clearly to the various institutions that had been approved in the first stage of the system of legal education. Additionally, the 1st defendant submitted that to set a pass mark for the examinations would defeat the very reason for the institutionalization of the new qualification requirements as the School can only take 250 students. The said defendant also contends that section 14(b) of Act 32 deals with the admission to the Ghana Bar, while section 13(d) of the Act deals with admission of students into the School. It is the case of the 1st defendant by way of further answer to the plaint with which we are concerned in these proceedings that since section 13 deals with admission of students, the Council is not required to make the arrangements specified in section 14.

The 1st defendant by way of objection to the claim of the plaintiff further contends that the word "may" utilized by the law-maker in section 14 of the Act is permissive and not mandatory and that the true meaning of the section is the conferment on the Council of the discretion of proceeding either administratively or by legislation as was done with the passage of LI 1296 and not for any other person to direct. The 1st defendant submits that faced with the dramatic rise in persons seeking admission to the School, the decision by the Council to introduce the examinations and interview is borne out of necessity and is within the powers conferred on it for the purpose of upholding high standards in the legal profession.

2ND DEFENDANT'S CASE

Then comes the contentions of the 2nd defendant, the body charged with responsibility for regulating legal education under Act 32. It is the contention of the 2nd defendant that the responsibility placed on it under Act 32 is to make such arrangements as it thinks fit for the purpose of establishing a system of legal education in the country. The Council was authorised by section 14 of Act 32 to provide through legislative instrument matters concerning legal education and in particular the conduct of examinations and the fees to be charged and the admission of persons to practice as lawyers at the Ghana Bar. That the enactment of LI 1296 was done to fulfil the said statutory objective by setting out the general entry requirements for the various categories of persons seeking to pursue the professional course in order to be enrolled as lawyers in the country. Over the years, however as a result of a dramatic rise in the numbers and in keeping with its mandate, the Council approved new campuses at GIMPA in Accra, and KNUST, Kumasi to afford opportunities to graduating law students from UG and other approved tertiary institutions to pursue the professional component of their legal education.

The 2nd defendant proceeds further to contend that in the exercise of the powers conferred on it by section 13 of Act 32 to "regulate the admission of students to pursue courses of instruction leading to qualification as lawyers", it introduced additional entry requirements in 2015 for admission into the School by which holders of LL.B are to pass a written examination and interview to be conducted by it and to pay the appropriate fees contained in LI 2216. The 2nd defendant contends that the introduction of the examination and interview is lawful being permissible under sections 13 (1) (d) and 14 of Act 32 and regulations 2 and 3 of LI 1296, and accordingly invites us to dismiss the action herein. The 2nd defendant also contends that the Council's non-publication of a legislative instrument to govern the exercise of its discretionary power to regulate admission to the law school did not render the conduct of examinations and interview for admission into the School unlawful.

The 2nd defendant then raised the absence of jurisdiction in the court to determine the matter herein by virtue of the plaintiff failing to show that there is any ambiguity or rival meanings being placed on a provision of the Constitution and that accordingly the court's enforcement jurisdiction has not been properly invoked. Pausing here, it is observed that while the defendants are all seeking to defend the same acts which have given rise to the action herein, there is a remarkable shift in their respective contentions particularly turning on the right of the Council to introduce examinations and interview as

requirements for admission into the practical component of the law course. The shift is concerning as the 1st defendant is a member of the Council.

ISSUES FOR DETERMINATION:

Having set out the rival contentions of the parties to these proceedings, we pause to consider the fundamental point of jurisdiction raised by the defendants and set out as issue (5) in the memorandum of agreed issues. Should the position contended by the defendants find favor with the court, then the plaintiff's action must suffer the fate of dismissal. In doing so the court has to consider the plaintiff's writ and accompanying processes for the purpose of determining the jurisdictional point raised in common by the defendants. In keeping with the settled practice of the court in such matters, the issue of primacy is the jurisdictional question namely whether the court has jurisdiction to determine the plaint before it. Had the action herein not dragged for a considerable time from its filing in 2016 necessitating the court to adopt an expeditious mode of disposal that required that the question of jurisdiction be dealt with in the course of the judgment, it would have been dealt with before now.

After giving anxious consideration to the issue of jurisdiction raised by the defendants, we have come to the decision that the issue before us relates to matters of public interest and the plaintiff need not demonstrate a personal interest in the subject matter. As the Supreme Court has made definitive pronouncements on this aspect of its original jurisdiction in several cases, we desire not to detain the precious time of the court by reference to any previously decided case in support of the said proposition. Secondly, this court has reiterated in several decisions that its enforcement jurisdiction can be invoked independently of the interpretative jurisdiction as the right to seek a remedy under article 2 (1) is disjunctive and not conjunctive. The said position was pronounced upon in the cases of Sumaila Bielbiel v Dramani [2011] 1 SCGLR 132; Emmanuel Noble Kor v The Attorney- General; an unreported judgment in case number J1/16/2015 dated 03 March 2016 and Abu Ramadan (No 2) v Electoral Commission and Another, an unreported judgment in case number J1/14/2016 dated May 05, 2016. Having surmounted the jurisdictional hurdle, we direct our energies to a consideration of the action herein on the merits.

After carefully attending to the case of the parties in these proceedings, we are of the opinion that the fundamental question for our decision is that set out distinctly as Issue (1) in the "Memorandum of Agreed Issues" filed by the parties on April 11, 2017 as follows:

"Whether or not the General Legal Councils imposition of new admission requirements violates Articles 11(7), 297 (d), 23 and 18(2) of the 1992 Constitution"

In our view, by the provisions of sections 13 of Act 32, the Council is endowed with the power to make arrangements for the establishment of legal education in the country and in particular to specify the subjects in which those seeking to qualify as lawyers are to be examined and among others regulating the in-take of students into the School and affording the opportunity of acquiring practical experience in the law as part of their professional law course. The Council as the regulatory body is also empowered to conduct examinations- preliminary, intermediate and final qualifying examinations. In order to achieve the objectives of section 13 of Act 32, section 14 enables the Council by legislative instrument with the approval of the appropriate Minister to make regulations concerning the conduct of examinations and fees to be paid and the courses of instruction to be pursued by those seeking to be admitted to the Ghana Bar to practice as lawyers as well as the issue of diplomas to persons who have successfully passed its final examinations. Although the parent Act was passed in 1960, nothing was done by the Council to regulate the exercise of the power conferred on it under section 14 of Act 32 to make regulations until sometime in 1984 when LI 1296 was passed. The said legislative instrument provided for the type of examinations to be conducted and how admissions into the School are to be made. In the regulations, separate provision was made for those who pursue courses of study in UG or some other institution approved by the Council and obtained LLB degrees for the purpose of undergoing practical experience in the professional program and those who had degrees in subjects other than law but desire to pursue a course of instruction in order to be enrolled as lawyers. There was provision also made for persons who had qualified to practice as lawyers outside the jurisdiction but desired to be enrolled in Ghana. Accordingly, the contention pressed on us that the regulations made for preliminary examinations extends to all categories of students seeking admission into the law school is rejected as not arising from a fair construction of the relevant laws. The provision in section 13 of the Legal Profession Act, (Act 32) on which reliance is placed to sustain the argument of the 1st defendant only authorised the Council by statutory instrument to make arrangements for the holding of examinations which may include preliminary examinations but in exercising its power under section 14 to make LI 1296, the Council provided no such examination in respect of LL.B graduates but limited it to non-law graduates. Indeed, the words preliminary course and examinations appear for the first time in part 2 of the regulations dealing with non-law graduates in regulations 16 and 17.The better view, therefore is that separate provision was made for each of the 3 categories of students- graduating law students from UG and other approved institutions, persons who had degrees in subjects other than law and

persons who after having pursued a course of instruction in jurisdictions other than Ghana were enrolled as lawyers but desired to be enrolled at the Ghana Bar. This view of the matter is freely borne out by the separate provisions contained in regulations 2, 16 and 23 of LI 1296.

The contention regarding the precatory nature of the power conferred on the Council in section 14 of Act 32 by the use of the words "may by legislative instrument" is also rejected as arising from a strained interpretation of the provision read together with the other provisions. The power conferred on the Council is to be actually exercised by means of statutory instruments and not by means of administrative fiat or executive fiat since it confers discretion exercised within the framework of statutory provisions and requires to have the attribute of law in order to ensure its compatibility with the constitution. The making of the very first regulations by means of a statutory instrument is significant in pointing to the understanding which the Council had of the power conferred on it and having so acted, it is difficult to accept the argument to the contrary; as a matter of basic legal proposition quite apart from the requirements of the constitution, requirements issued administratively cannot co-exist with those issued statutorily. When so considered, the defendant's submissions pales into insignificance.

Proceeding further, it is observed that while regulations 2 and 3 of LI 1296 concerning the admission to the School by graduates of law subject to their obtaining passes in seven specified subjects made no mention of a requirement regarding examinations, that in relation to persons who have degrees in subjects other than law are required by regulation 16 to take an entrance examination. The said provision states:

> "(1) A person who has obtained a degree in a subject other than law at the University of Ghana or institution approved by the Council may be admitted to the Professional Law Course -
>
> (a) If he is of good character;
> (b) If he has passed an entrance examination conducted by the Board;
> (c) and if he has successfully completed a preliminary law course in the following subjects…"

The subjects specified are the same in number and content as those required by law graduates in regulation 2 to pursue in the University of Ghana or other approved institution. Reading these two provisions as part of the same document, it is clear that the two regulations deal with different categories of persons who might seek admission to the School and accordingly, the interpretation urged on us by the 1st defendant is rooted in error. The fact that the non- law graduates are to pursue courses in the seven

specified subjects and pass them is to enable them to have grounding in the same subjects as law graduates. It is noted that for some time now there have been no admissions into the School of non-law graduates within the contemplation of regulation 16 of LI 1296 rendering the said provision extinct. Admissions into the School have involved only LL.B graduates from institutions in Ghana and elsewhere approved by the Council and those admitted under regulation 23 of LI 1296. Until 2015 admission to the School of law graduates from UG and approved universities was made with reference to regulation 2 of LI 1296 only. Indeed, the defendants have been frank in their submissions to say that the new requirements came into being from 2015 having been necessitated by a dramatic and or huge rise in the numbers of students seeking admission into the School. *That assertion is a clear admission that over the years as the Council approved institutions other than UG to admit persons to pursue courses of instruction leading to the award of degrees in law as part requirement of the two stage system of legal education that it had put in place, not much attention appeared to be given to the rise in the numbers of persons likely to be turned out in relation to classroom spaces in the School contrary to the clear statutory provision in section 13 of Act 32 when read in the light of regulation 2 of LI 1296. The situation which according to defendants compelled the Council to introduce the new requirements could in all sincerity have been avoided if the Council had given careful thought and consideration to the likely impact of the huge numbers of law graduates on the facilities available in in the School. A proper discharge of the power conferred on the Council under regulation 2 (1) (b) to approve other universities or institutions to pursue degrees for the purpose of meeting part of the requirements for admission into the School requires that the approvals be not open-ended but made having regard to the facilities available for their use in the professional law course*. This calls for the allocation of for example quotas to UG and other universities and or institutions to which approval have been given to offer law degrees for the purpose of enabling students to be admitted to the School for their practical training in order to qualify for enrolment as lawyers. While not taking the view that this is the only means by which legitimate controls may be exercised on admissions into the School, it is strongly recommended that the Council give consideration to this option in the future as part of its regulatory mechanism.

The defendants' contends also that in issuing new requirements for qualification into the School, the Council was within its lawful mandate and that the mere failure by it to publish a legislative instrument to provide for the additional requirements as provided for in articles 23, 296 and 297 does not render the exercise of its discretion unconstitutional.

The question for our decision in regard to issue (1) turns mainly upon a consideration of the constitutionality of the introduction of requirements for admission into the School by

graduating law students outside that contained in regulation 2 of LI 1296. The passage of LI 1296 under the powers conferred on the Council by section 14 of Act 32 does not only make those regulations the lawful criteria for admission of such students into the School but actually estops the Council from seeking to contend to the contrary notwithstanding a huge rise in the number of students. It appears that the answer of the defendants to the issue arising from the administrative directions does not in the slightest degree advance its case at all as it is settled law that administrative directions or fiat cannot override statutory provisions. By the making of LI 1296, the clear position regarding admissions into the School is that from the date of its making the admission of students who had graduated in law from UG and other approved institutions to be good must be derived from the said legislative instrument. Therefore, it is wrong for the Council without utilizing the appropriate mechanism provided by law in article 297 of the Constitution to purport to bring about a change in the admission requirements. The introduction of the new criteria which came into effect in 2015 is thus not only in violation of article 297 of the constitution but devoid of any force at all. It is observed that while the provisions of LI1296 are enforceable those issued administratively are without effect in the eyes of the law.

Judicial notice is also taken of the fact that the recent guidelines contained in a publication in the media authored by a body described as the Independent Examinations Board, an entity unknown either to Act 32 or LI 1296 has made changes to the existing format of the examination to be taken by graduating law students. The requirement in section 14 of Act 32 to the Council to proceed by regulations is to ensure certainty, a characteristic feature of laws as opposed to administrative fiat which may be issued from time to time and results in prejudicing the reasonable expectations of persons that the format of the examination would be as was the case in 2015 and 2016. Reference in this regard is made to the observations of Sophia Akuffo JSC (as she then was) in the case of Awuni v WAEC [2003-2004]1SCGLR 471, wherein she said of WAEC's power in relation to examinations that it can only be justly carried out if regulations were made under the authority conferred under the West Africa Examinations Council Law, 1991 (PNDCL 255). We think that as was observed by the learned justice, proceeding by regulations would foster constitutionalism and legality. We refer to the words of Sophia Akuffo JSC in the said Awuni case at 521, wherein she delivered herself thus:

"However, the enviable standing of WAEC can be sustained only by ensuring that its administrative processes, including the exercise of its powers remain just. In our view, this can only be achieved through patent constitutionalism and legality rather than through capacity and arbitrariness. Towards this end, it will inure to the benefit of both WAEC and public interest, as well as foster the sustenance of the rule of law, if the

Minister for Education were to exercise the power given by section 12 of West Africa Examinations Council Law, 1991(PNDCL 255), and enact regulations to guide, inter alia, procedure for the exercise of WAEC's powers under sections 3-10 of the Law."

It is clear from the above speech that where power is conferred on an authority to make regulations dealing with its powers then that mode of the exercise by it of its powers must be preferred. We think that a similar observation can be made of the power conferred on the Council under section 14 of Act 32.

The question which then arises is what consideration must have informed the Council to effect a change in the format of the examination as notified to the public in an advertisement recently. Although we have no doubt that the Council would have acted in the best interest of furthering its powers derived from Act 32, we think that had there been regulations spelling out the circumstances in which such a change for example might be made, and it would better serve the requirements of fairness. In any case, it is evident that administrative instructions cannot be issued in contravention of article 11(7) of the constitution and statutory rules cannot be set at naught by administrative fiat for the simple reason that rules made statutorily have the force of law while administrative instructions are not enforceable. Thus, LI 1296 which has not been proved to be in conflict with the parent Act, (Act 32) remains in force despite the administrative directions issued by the Council as they cannot operate to add to or alter the statutory instrument. But that is not the end of the consideration of the new requirements in terms of issue (1).

It is observed that when administrative bodies which have been endowed with discretion under statutes to regulate a system that they are authorised to put in place have done so in the first instance by a legislative instrument , then when there are changed circumstances that render carrying out the regulations made by them impossible such as contended by the defendants when there was an increase in the number of students seeking admissions into the law school, the correct thing to do having regard to the fact that there is a subsisting regulation passed in 1984, LI 1296 is to take advantage of the constitutional provisions contained in article 297 (b) and (d) to amend, or revoke the existing legislation and substitute it with a new one. A reference to the said constitutional provisions puts the matter beyond argument. Article 297 (b) and (d) provide as follows:

> "In this constitution and any other law-
>
> (b) where a power is conferred or a duty is imposed, the power may be exercised and the duty shall be performed, from time to time, as the occasion requires.

(d) where a power is conferred to make any constitutional or statutory instrument, regulation or rule or pass any resolution or give any direction, the power shall be construed as including the power, exercisable in the same manner, to amend or to revoke the constitutional or statutory instrument, regulation, rules or resolution or direction as the case may be."

We make bold to say that at law when there is the need for an existing statutory instrument such as LI 1296 to be changed to meet new circumstances, the mode to be employed is to make a new instrument in the manner clearly laid down in article 11(7) of the constitution. Of statutory instruments, it can be said that they are easier to make than statutes because they are intended to cater for changed circumstances and may in this context be described as ambulatory. And the process involved in the making of a legislative instrument which requires it to be laid before parliament for 21 days and mature into law if before the expiry of twenty-one parliamentary sitting days, it has not been annulled is to ensure that such proposed regulations conform with not only the enabling Act, Act 32 but the fundamental law of the land, the 1992 Constitution. Inherent in article 11(7) regarding the making of statutory instruments is the power of the legislative body to scrutinize instruments laid before it to bypass the constitutional mode provided is clearly in breach of the doctrine of separation of powers and an affront to the exclusive domain of Parliament to make laws. The requirement of publication of such an instrument in the gazette is also an additional safety net which informs the entire citizenry of the contents of the law by way of guidance.

Consequently, the plaintiff describes the introduction of the new qualification requirements as "impositions". "Imposition" (the singular of "impositions") bears the following meaning in the Oxford Advanced Learners Dictionary (Seventh Edition) at page 749:

"an unfair or unreasonable thing that somebody expects or asks you to do."

Considering the existence of LI 1296, the new guidelines for admission are clearly unfair and constitute an imposition as persons to whom regulations 2 and 3 of LI 1296 apply have no option than to yield to the directions if they seek to be enrolled at the Ghana Bar. Since there were existing regulations before the new requirements were introduced, the Council ought to have acted fairly in compliance with the obligation imposed on administrative bodies in article 23 of the constitution by which it is provided as follows:

"Administrative bodies and administrative officials shall act fairly and comply with the requirements imposed on them by law and persons aggrieved by

> the exercise of such acts shall have the right to seek redress before a court or other tribunal."

Since the constitution has made elaborate provisions for making changes to statutory instruments, the failure by the Council to employ the constitutional mode in the introduction of the new requirements is an instance of a failure to act with the requirements imposed on them by law. By side stepping the procedure provided for in article 11(7), as authorised by article 297(b) and (d), there is a clear violation of the relevant provisions which is an instance of inconsistency of an act or conduct within the contemplation of article 2(1) of the constitution. Non-compliance with the relevant constitutional provisions can be explained as constituting not treating persons affected by the new directives reasonably, a consideration which is inherent in the use of "fairly" in article 23. To treat people in a manner that derogates from their statutory rights available to them under regulation 2 of LI 1296 is without doubt inappropriate.

In the determination of issue (1), regard was had to the plaintiff's contention regarding article 18 (2) of the Constitution that it had created a property right in persons pursuing law degrees in UG and other approved Universities and institutions who have successfully completed courses of instruction and qualify in terms of regulation 2 of LI 1296. In pressing his arguments under the said article, the plaintiff placed great reliance on decisions from the United States of America which though raising interesting points have not had the desired persuasive effect to enable us yield thereto.

The next issue for our decision in these proceedings is that which is numbered as (2) and formulated thus:

> "Whether or not Regulation (3)(b) of LI 1296 is void –for-vagueness and is facially unconstitutional and whether the General Legal Council unconstitutionally applied it to disqualify eligible students who had qualified for admission to pursue the Professional Law Course"

Regarding this issue, it is observed that it raises two separate issues and should have been so set out to reflect firstly the alleged unconstitutionality of the regulation and then a separate issue had in regard to its application by the Council to disqualify students. Having had the issue as formulated to proceed to trial without any objection being taken thereto by the defendants, we are hopeful as we observed earlier of the nature of verifying affidavits that in future parties would separate for the decision of the court each question or issue that turns on the case. In the instant case, while the first part of the composite issues deals with a question of law, the second part raises a mixed question of fact and law requiring the proponent to lead credible evidence on the factual

component in order to satisfy us on the evidential burden for a determination of the alleged unconstitutionality to be made. We have read the considerable submissions filed by the plaintiff in support of issue 2 and have reached the opinion that the impugned regulation deals with questions of unsuitability of students who having obtained their LLB degrees seek admission to the School and is in its nature free from any allegation of vagueness. In our opinion, as a provision touching and concerning suitability, it has been expressed in a manner that would enable the Council to apply different criteria of unsuitability to students in a flexible manner. Again, when the sub-regulation is read together with that which precedes it, the alleged vagueness wanes into thin air as it is then patently clear that it relates to incompatibility of a person who seeks to be enrolled subsequently as a lawyer and must be read as being subject to the constitutional requirement regarding the exercise of discretionary power in articles 23 and 296 of the Constitution and thus imposing the concept of reasonableness, fairness and absence of caprice or arbitrariness in the Council.

The regulation in question was intended by the law-maker not to tie the hands of the Council but to free its hands in order that specific cases of unsuitability might be dealt with taking into account for example the ethical standards required of a lawyer. Indeed, the very fact that the plaintiff is unable to cite any instance on which such a provision was applied to disqualify a student who has met the qualification criteria spelt out in regulations 2 of LI 1296 seems to be supportive of the fact that it has never been applied as alleged by him. The consideration of issue 2 ends with the statement that where from the nature of case asserted by a party, there is likely to be some evidence to sustain a matter of fact but that has not been tendered then the trier of fact can legitimately reach the conclusion that the failure to lead the alleged evidence arises from its non-existence as is statutorily provided for in section 11 of the Evidence Act, NRCD 323 of 1975. Reference is made in particular to section 11(1) as follows:

> "(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."

Then comes for our consideration, issue 3 which reads thus:

> "Whether or not the General Legal Council's failure to specify alternative places and mode of instruction for all persons who meet the requirement in Regulation2 of LI 1296, when taken in the light of Section 13 of Act 32, violates Articles 296 (a) (b) and 297 (b) of the 1992 Constitution."

We are of the view from a fair reading of section 13 of Act 32 against the background that before the date of the issue of the writ of summons herein, the Council had approved the use of campuses other than that commonly referred to as Ghana School of Law, a fact admitted to by the plaintiff in its case, there can be any real issue that there has been a violation of the mandate imposed on it under the law in relation to the articles of the constitution mentioned in the formulation of the third issue. The plaintiff is unable by reference to numbers to show that the additional campuses approved by the Council when taken together cannot meet the space requirements of persons seeking to be admitted into the professional course. The direction in respect of alternative places also has financial and budgetary constraints which are not within our knowledge and prevents us from fairly considering the case made by the plaintiff in support of this issue. Then there is the issue of the availability of lecturers to teach in those approved institutions, which appears not to have been addressed by the plaintiff. These factors are matters which the plaintiff who bears the initial burden of introducing evidence in terms of section 11(4) of the Evidence Act, NRCD 323 ought to have placed before us and not having made the slightest effort to do so must fail .The section provides as follows:

> "(4) In all other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence."

The next Issue to be addressed is (IV), which is expressed thus:

> "Whether or not the General Legal Council's policy on reviewing examination scripts and quota admissions violates articles 23, 296 (a) (b) and 18 (2) of the 1992 Constitution"

Again, we have before us two different contested facts that have been lumped together as an issue for our decision contrary to the settled practice of the court. Having held earlier on in the course of this judgment that the introduction of examination is inconsistent with the constitution, there is in reality no need for a decision to be delivered on aspects of the examination more importantly when no specific instances have been alleged and or proven before us. Again, in the case of Awuni v WAEC [2003-2004] 1SCGLR 471, a similar submission that the scrutiny of examination scripts implies procedural fairness was rejected by the court. However, we think that as the purpose of the new requirements of an examination and interview were according to the defendants informed by the need to control the number of graduating law students entering the School, it is essentially a quota based admission policy that not having been introduced by means of a statutory instrument violates articles 11(7) and 297 (b) and (d) of the Constitution. The

pronouncement in regard to issue (1) on the status of the examinations and interview applies to the arrangement put in place whereby admissions to the School are apportioned in relation to the available facilities in the school with no pass mark being set in advance and applied in a manner that deprives students who have met the qualification provided in regulation 2 of LI 1296 from pursuing their practical training course; a process which has inherent in it attributes of unfairness contrary to articles 23 and 296 of the Constitution.

Then comes issue (5) by which the question of jurisdiction of this court has already been determined so we turn to issue (6). That issue raises a matter which hinges on the consideration of issue (1) as is the issue numbered (7). In our view, the decision on issue (1) having substantially disposed of the questions on which issues (6) and (7) turn, it is unnecessary that we proceed to determine these other issues. Issue (8) also raises questions which the determination of issue (3) has rendered unnecessary. In fact, in considering issue (3), the entire allegation concerning the Council's failure was considered on the basis that it had power to specify alternative places for instruction for students who satisfy the requirements contained in regulation 2 of LI 1296. In the circumstances the consideration of issue (3) necessarily involved a consideration of issue (8) which looks narrower in scope that the one before it, and therefore it would be repetitive embarking on a separate consideration of issue (8).

The result is that the plaintiff's action succeeds in part only. In particular, we make an order in terms of reliefs (1) (3) and (4) of the writ of summons. Relief 6 is granted in part (limited to the second part of the issue only). Reliefs (2), (5) part of relief 6(limited to the first part dealing with review of examination scripts) and (7) are dismissed.

Having dealt with the fate of the action in terms of the reliefs sought, there is the need to consider the making of consequential reliefs under article 2 (2) of the Constitution by which we are authorised as follows:

> "The Supreme Court shall, for the purposes of a declaration under clause (1) of this article, make such orders and give such directions
>
> as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration made."

These are extensive powers intended to uphold the supremacy of the Constitution. This power was recently used by us in the case of Abu Ramadan (No 2) V the Electoral

Commission and Another (supra). In our opinion, the discretion conferred on this court following a declaration of inconsistency of an act with the provisions of the constitution enables it to take all the circumstances which arise from the evidence tendered before it in order to make orders that would not create hardship, inconvenience and or result in unwinding actions taken when the administrative directions which have given rise to the action herein were thought to be lawful. It is important to say that the authority conferred on the court is express unlike that pertaining to for example in the United States of America where there are no clear words conferring the power of judicial review on the Supreme Court which has tended over the years to exercise that power dating from the landmark case of Marbury v Madison 5 US (1 Cranch) 137, (1803). By the said decision, the United States Supreme Court assumed the power of judicial review for the purpose of upholding the supremacy of the constitution and to check as a balance of power in preventing the executive and legislative arms from exceeding their limits of authority. Article 2(2), however is an express constitutional mandate conferred on us to uphold constitutional theory while avoiding chaos or injustice. The authority conferred on us by article 2(2) is intended to be exercised creatively in order to enable us do justice on case by case basis. Ordinarily declarations of inconsistency result in avoiding acts and or omissions founded thereon. What this means is that once a declaration of invalidity has been made in relation to the examination and interview, then all things done based on the conduct of such acts from 2015 must be struck down. Such a direction would have a retrospective effect and have exceptional prejudicial effects on persons who relied on the directions which have been declared unconstitutional in these proceedings. It would be unprecedentedly detrimental to the students concerned if we should make an order that would invalidate admissions offered into the School as those likely to be affected by such an order satisfied the additional requirements which are exterior to LI 1296. Indeed, some of these students have since October 2015 been on the program and are now in the final phase of the program preparatory towards being enrolled at the Ghana Bar in October 2017 while others are about to finish the first of the two years and have finished writing the examinations of the first semester. *To make an order annulling admissions founded upon the examination and interview that such students were compelled to take at the direction of the Council would result in occasioning uncommon inconvenience and hardship to them and result in a miscarriage of justice*. In the case of In re Spectrum Ltd (In Liquidation) [2005] UKHL 41, para 40, Nichols LJ faced with a similar situation observed in a persuasive manner when he said:

> "there could be circumstances in this country where prospective overruling would be necessary to serve the underlying objective of the courts of this country: to administer justice fairly and in accordance with the law."

On the evidence placed before us, we are faced with a similar situation that requires that prospective overruling be preferred in the matter herein in order as Nichols LJ put it in the course of the In re Spectrum case (supra) to avoid a decision which:

> "would have such gravely unfair and disruptive consequences for past transactions or happenings that this House would be compelled to depart from normal principles."

We think that the path of prospectivity would better serve the needs of justice as we are authorised to do by article 2 (2) of the constitution. And in seeking to adopt this approach, we are not altogether without precedent in the jurisdiction. As was sated in the preceding paragraph, we adopted this course in Abu Ramadan (No 2) supra) for the purpose of not depriving voters of their registration under a provision of the law which was struck down in a previous decision when a challenge was mounted to the validity of persons who had utilized national health insurance cards to register. A similar course was adopted by us in the case of Martin Kpebu v Attorney General in an unreported judgment of the court in Suit Number J1/13/2015 dated 05 May 2016 wherein we struck down certain restrictions on the grant of bail by courts contained in the Criminal and Other Offences (Procedure Act) on the ground of their inconsistency with the constitution. Other jurisdictions confronted with problems similar to ours arising from legitimacy declarations have adopted the prospective approach. Reference is made to the common law jurisdiction of Canada, where courts have developed a practice that allows the suspension of declarations of unconstitutionality in appropriate cases to avoid consequences adverted to by Nichols LJ in the In re Spectrum case (supra). By so proceeding, Canadian courts afford opportunity to the appropriate authority within a specified period of time to remedy the defect in order to avoid chaos, injustice or inconvenience and hardship to those affected by the declaration of invalidity. An exposition of the Canadian approach is manifest in Schechter v Canada [1992] 2 SCR 679 and Carter v Canada (A-G) [2016] 1 SCR 679 (SCC). Similarly, there is emerging in Ireland, the practice whereby in order to avoid invalidating convictions based on a Juries Act that was declared unconstitutional, prospective effect was given to the prior decision in De Burca v Attorney- General [1976] IR 38 (IESC), when a convicted person basing himself under the said judgment challenged his trial and conviction. In its judgment in the subsequent case entitled The State (Byrne) v Frawley [1978] IR 326 (IESC) which was a collateral attack on the trial in which the plaintiff was convicted, the court in its decision rejected an invitation to declare the trial invalid saying that it was not in the public interest to set aside the trial. O' Higgins CJ in the course of his judgment said that it would: "follow with inexorable logic" that each jury trial based on the impugned legislation would be nullified rendering the sentences founded thereon without legal authority.

Dealing with the case before us, there is also the consideration that all those students had before satisfying the additional requirements imposed by the Council satisfied the qualification requirement contained in regulations 2 and 3 of LI 1296 which has been given effect to in this judgment and accordingly to deprive them of the admissions which were offered to them would undermine the declaration made regarding the extraneous requirements that they had to satisfy. Such a direction therefore would be contrary to reasonableness and not derived from the pronouncement made regarding these additionally imposed requirements.

By virtue of and in accordance with article 2 (2) of the Constitution, it is hereby ordered that the Council puts in place a mechanism that would enable it to make changes to LI 1296 in terms of what it thinks appropriate in order to properly exercise its mandate under Act 32 having regard in particular to sections 1, 13 and 14 by putting in place a system of legal education in terms of articles 11(7) and 297 of the constitution. As preparations towards admissions in October 2017 have already been initiated and bearing in mind that persons who would avail themselves of such opportunities are qualified within the scope of regulations 2 and 3 as pronounced in this judgment, we do not think it is in the public interest to interfere with such arrangements. It is hereby further ordered that the new system should be in place within 6 months from today such that admissions into the professional law course in October 2018 shall not be conducted under the system which has informed the declaration to which the consequential orders herein relate.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

V. AKOTO-BAMFO (MRS)
(JUSTICE OF THE SUPREME COURT)

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I had the privilege of reading beforehand the erudite and exhaustive judgment of my worthy brother Gbadegbe JSC and I agree that the claims of the plaintiff be granted in part in the terms stated in the lead judgment. I am in agreement with the plaintiff that the administrative directives which sought to substantially vary the qualification criteria set out in LI 1296 for a student who obtained LLB to be considered for admission into the professional law course at the Ghana School of Law is inconsistent with Articles 23 and 296(b) of the Constitution. I have not been persuaded by the arguments of the defendants that after initially exercising its functions under s.13 of the Legal Professional Act, 1960 (Act. 32) through a statutory instrument, the 2nd defendant is at liberty subsequently to exercise them in the form of administrative instructions. The due process of law required by Article 296 (b) for the exercise of discretion appears to me to be undermined by this argument of the defendants.

On my part, the aspect of the plaintiff's case I referred to above was solidly grounded on the provisions of the 1992 constitution and the relevant cases decided by the Supreme

Court of Ghana cited by the plaintiff and there was no need for him to seek to also rely on doctrines and case law from other jurisdictions. Those doctrines and cases are based on constitutional provisions of those jurisdictions which, though appear similar to provisions of our constitution, contain significant differences. For instance, the plaintiff argued that the 2015 administrative directives of the 2nd defendant had the effect of depriving LLB holders of property rights that they acquired in professional law education and that such deprivation can only be done in compliance with due process of law. He referred to the U.S. Supreme Court case of **Board of Regents v Roth 408 U.S. 564 (1972).** In that case the board of regents of states colleges sought a review of a decision from the Court of Appeals for the Seventh Circuit, which held that the respondent professor was wrongfully terminated from his teaching job in violation of his Fourteenth Amendment right to due process. The U S Supreme Court reversed the Court of Appeal on the ground that the professor was not entitled to Fourteenth Amendment protection. Plaintiff at the same time relied on Article 18(2) of our Constitution to support his argument that property rights cannot be taken away without due process as if it is the equivalent of the Fourteenth Amendment of the American Constitution. Article 18 (2) of our Constitution talks of privacy of property which is the right of a person to be left alone on his property and the exclusive enjoyment of same. It is rather Article 20 of the Ghana Constitution that deals with deprivation of property but its provisions are significantly different from those of the Fourteenth Amendment. In my considered opinion, the due process provisions of our constitution that are applicable on the facts of this case are those contained in Articles 23 and 296(b).

The 1992 Constitution of Ghana contains elaborate and progressive provisions covering a wide range of matters that are litigated upon in our courts and I will urge parties and lawyers in such cases to concentrate on its provisions so that we develop our constitutional jurisprudence along the lines of the structure of our constitution and not in alignment to the structure of other constitutions, no matter how celebrated they may appear to be. Of course, we frequently make references to appropriate case law from other jurisdictions for persuasive reasoning but where such a case was decided on the

basis of a statutory regime different from what pertains in our jurisdiction, then its usefulness becomes doubtful. Before reference is made to a constitutional law doctrine or case from outside, due consideration must be had to the grounds upon which it was evolved or decided. Save for the above observations, I endorse the reasoning and conclusions in the lead judgment.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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