



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 232

COURSE TITLE: LABOUR LAW II

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COURSE GUIDE

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Introduction

Labour Law is concerned with the law regulating the affairs of an employee with that of the employer. The Nigerian Labour Law, as will be seen in the historical aspect of it, was adopted from the English Legal System based solely on the fact that we inherited the English Legal System by reason of our affiliation with England through the instrument of colonialism. The practice of Labour Law is influenced by the general legal context that prevails in England.

The major statute that regulates labour law activities in Nigeria is the Labour Act Cap 198, Laws of the Federation of Nigeria, 2004, while others such as the Trade Disputes Act, the Workmen's Compensation Act, Trade Unions Act, and The Factories Act complement it.

The topics in this course are separated into units and generally border on employee/employers relationship in Nigeria and ancillary issues. They most importantly, touch upon the underlying features of the above relationship and deal with the practical issues that may arise as fallout of the implementation of this relationship in reality, its legality and workability in a modern democracy.

Course Aim

The primary aim of this course is to familiarize the student with the subject matter, deepen legal understanding and information and assist the student to begin to use legal information available to him to begin to analyse real life issues that may occur in the work place or within this relationship.

Course Objectives

The major objectives of this course is to enable students develop knowledge of the legal issues guiding the relationship between employee and employer and more specifically to have access to and knowledge of the following by the end of the course:

- (i) All the relevant enactments and legislations in relation to labour law in Nigeria;
- (ii) Identify and understand what the collective bargaining process entails
- (iii) Determine the meaning of Collective Agreements
- (iv) Understand the nature, legal framework and principles involved in collective agreements.
- (v) Analyse and understand the importance of the evolution of the collective bargaining process in the age of Information Technology.
- (vi) Know the basic operational structures of a trade union.
- (vii) Know the consequences and advantages in embarking on an industrial action. E.g. strike, picketing and lock-out.
- (viii) Differentiate between Tortious Liability and Trade Dispute.
- (ix) Know ways and manners in which disputes arising from employment and trade union activities are settled.
- (x) Know the basic ingredients and operational effect of the Factories Act.
- (xi) Know the implication of the Workmen's Compensation Act on the contract of employment, particularly on an employee.
- (xii) Identify some agencies and their responsibilities with respect to labour relations management.

Working through this Course

To complete this course, you are advised to read the study units, read recommended books and other materials provided. Each unit contains Self Assessment Exercise, which you are expected to attempt to enhance your knowledge. You may be required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 17 weeks to complete, you will find all the components of the course listed below. You are advised to judiciously allocate your time to each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

1. The Course guide
2. Study units
3. Textbooks
4. Referred Case Law
4. Assignment File

Study Units

The course is sub-divided into Modules. Each module has within it four study units as follows:

MODULE 1: COLLECTIVE BARGAINING AND AGREEMENT.

Unit 1 Collective Bargaining

Unit 2 Collective Agreement

Unit 3 Frame work & Nature

Unit 4 Recognition of Trade Unions & Duty of Disclosure

MODULE 2: TRADE UNIONS.

Unit 1 Formation

Unit 2 Rights & Obligations:

Tortuous Liability

Unit 3 Criminal Liability & Civil Liability (Tortuous Liability):

Unit 4 Settlement of Trade Dispute

MODULE 3: SAFETY AT WORK.

Unit 1 Employers Duty of Care: Protecting Health & Safety

Unit 2 Factories Act

Unit 3 Defences

Unit 4 Workmen's Compensation Act

Unit 5 Employers Vicarious Liability

MODULE 4: AGENCIES.

Unit 1 Agencies: I.A.P

Unit 2.N.I.C

Unit 3 Industrial Training Fund

All these Units are demanding. They also deal with basic principles and values, which you are expected to study and come to terms with.

Tackle them in separate study periods. You may require several hours for each as well as several references.


We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the scope of Labour Law generally. You will then have a clearer picture on which to paint these topics.

Subsequent Courses are written on the assumption that you have completed these units.

Each study unit consists of one week's work and includes specific objectives, directions for study, reading materials and Self Assessment Exercises (SAE). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

Text Books and References

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise. You should also ensure you read the cases referred to for a wider and clearer picture of how the law works and more detailed understanding. Also note that the first class student may also read up on articles and criticisms to have a holistic

and critical understanding of issues !

Assessment

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal

assessment in accordance with the deadlines stated in the presentation schedule. The tutor marked assignment currently accounts for 30% of your total score.

Tutor-Marked Assignment

There is a Tutor Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three performances will be used for assessment. The assignments carry 10% each. When you have completed each assignment, send it for assessment. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

Course Score Distribution

The following description lays out how the actual course marking is broken down.

Assessment Marks

Assignments 1-4 (the best three of all the assignments submitted) will be used for your assessment, as previously stated they account for 30% of the total course marks. There is a written examination at the end of the course which accounts for 70% of your score. The total course is scored at 100%.

How to Get the Most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are placed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

Facilitator/Tutors and Tutorials

There are 15 hours of tutorials provide insupport of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will access you and comment on your assignments, keep a watch on your progress, and on any difficulties you might encounter and provide assistance to you during the course. Where assignments are given, you must send your completed work to your tutor well before the due date. They will be accessed by your tutor who will communicate with you and revert to you as soon as possible.

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

- 1) You do not understand any part of the study units or the assigned readings;
- 2) You have difficulty with the self assessment exercises;
- 3) You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment. You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

Summary

This course deals with Labour Law which is concerned with the law regulating the affairs of an employee with that of the employer. The course is separated into modules and further separated into study units for easy assimilation. The totality of the course revolves around the

employee/employers relationship in Nigeria, what may influence its form and content as well as how real life situations are possibly tackled.

We wish you success with the course and believe that it will be not only interesting but ultimately useful in the pursuit of your career or life's endeavours.

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MODULE 1 COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENT.

Unit 1 Collective Bargaining Collective Agreement

Unit 2 Collective Agreement

Unit 3 Frame work & Nature

Unit 4 Recognition of Trade Unions and duty of disclosure

UNIT 1 COLLECTIVE BARGAINING

CONTENTS

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Properties of Collective Bargaining

3.2 Legal Status of Collective Bargaining

3.3 Legal Effect of a Collective Bargain on a Contract of Employment

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

Collective Bargaining is defined as any agreement made in whatever way and in whatever form by and on behalf of trade unions and employers. It is also the process through which the antithetical interests of employers and employees are harmonized through discussions and negotiations.

2.0 OBJECTIVES

The purpose of this unit is to show the importance of collective bargaining. Understand the legal implication of a collective bargain and the legal effect of a collective bargain on an employment agreement.

3.0 MAIN CONTENT

3.1: Properties of Collective bargaining

Consists of negotiations between an employer and a group of employees so as to determine conditions of service.¹ Employees are often represented in bargaining by an elected group or body, called a union or other labour organisation. Collective bargaining is usually regulated by federal laws and by administrative agency regulations and judicial decisions.² Employees generally have a right to collectively bargain and join trade unions and this is generally applicable to both public and private sector. It may be defined as the process of working out a *modus operandi* between two parties - employer and trade union organizations in matters

¹ See the following for further information: Cornell law dictionary, legal dictionary (thefreedictionary.com). See also Essentials of Employment Law by David Lewis and Malcolm Sargeant.

² Cornell law dictionary

relating to both parties.³ Or it may be seen as the process through which a Labour Union and an employer negotiate the scope of the employment relationship. Its ultimate goal is entering into a collective bargaining agreement. This will typically contain but not be limited to the following: wages, work hours, benefits, handling of disputes, other employment terms and employment centred issues. The agreement, in and of itself cannot be completely exhaustive, thus, it may be and oftentimes is usually read in conjunction with established customs and practices (written and unwritten) and informal agreements. It is however noteworthy that it is limited in scope and authority by enactments, thus it would be limited by the act and also in scope, to the extent that it cannot accomplish what the law would ordinarily prohibit by agreement or deny for instance employees of rights they would otherwise enjoy under law. It cannot also be used to waive rights or obligations imposed by law on other parties. For example, an employer cannot use collective bargaining to reduce the level of safety standards it must follow with regards to a particular profession.

Professor Egerton E. Uvieghara however notes that the basic aim of collective bargaining is to encourage negotiation and eventual enforcement among parties.

One very important major aspect of this concept is that the terms of employment are usually contained in those rules which regulate such matters as wages, hours of work, holidays, holiday pay, sick pay, overtime and redundancy. However, the procedural function of this concept has been subdivided into the various heads that form the main body of this unity.

3.2 Legal Status of a Collective Bargain

In an early study on the concept of collective bargaining in England⁴, collective bargaining was described as the main instrument used by employees and government institutions in

³ Cornell law dictionary

⁴ 'Collective Bargaining: A case study' Sydney & Beatrice 1891

industry to sort out their differences through negotiations which ultimately enabled them to achieve a compromise between the claims of employers and their perceived right to exercise unilateral control over the employment environment and employees during and after work hours.

Under Nigerian law, the Labour Act describes collective bargaining as the process of arriving at collective agreements. Collective bargaining represents the backbone of the employer-employee relationship. It is widely accepted as the most important instrument for the determination of wages, employment conditions and the regulations of the employer-employee relations. In practice, collective bargaining is a process of obtaining concessions and reaching compromises on employment and working conditions. As a tool for the practice of Industrial Relations, collective bargaining may be interpreted as a process of interest accommodation through direct or indirect bipartite and tripartite negotiations.

In its narrow sense, it may be viewed as a process of negotiation between employers individually or as a group, and trade unions. The outcome of such negotiations is an obligatory document, a *collective agreement* that determines wages and other conditions of work. Importantly, the concept of collective bargaining has expanded considerably in recent years to encompass more than just the negotiation of collective agreements. It involves a continuous process of discussion, consultation and bargaining between employers and workers on a wide framework of economic policies globally.

Though Collective bargaining constitutes an important means by which workers seek to satisfy their economic and social interests and is seemingly crucial to the attainment of industrial peace in Nigeria. A collective bargain in and of itself though highly persuasive in reaching future agreements and interpreting the terms of a collective agreement is not legally

enforceable. It may at best be submitted as evidence to support proof of the intention of the parties to the bargain.

Nigeria Labour Law provides for automatic recognition of trade unions for collective bargaining purposes (see the Labour Act). This means that the employer must recognize registered trade unions in his establishment and bargain with such unions in their bid to safeguard their economic interests in employment. The duty to recognise a trade union is conterminous with the duty to negotiate with it and conclude agreements.

Thus, a refusal by an employer to recognise and bargain with a union or adhere to the agreement arrived at could lead to strikes by workers to realize such improvements in working conditions.

SELF ASSESSMENT EXERCISE 3

Are collective bargains legally enforceable? Give reasons and authorities for your answer.

3.3 Legal Effect of a Collective Bargain on a Contract of Employment

The collective bargain often defines the frame work for a collective agreement. It is the basis on which a collective agreement is reached and entered into between the parties to the negotiations. Though the process itself maybe sometimes involuntary⁵ it is the forum by which parties to the negotiation ‘voluntarily’ reach agreement on a wide range of ‘employee-employer’ issues which most probably will not be accomplished by one-on –one bargaining. Members of a union or a profession who are not parties to the collective bargaining process can ordinarily benefit from and enjoy the duties, responsibilities and benefits accruing from a collective bargaining process once an agreement has been reached by incorporation of the provisions into their contracts of employment. It is noteworthy that incorporation maybe

⁵ One party's failure to reach agreement entitles the other to resort to certain legal tactics, such as strikes and lockouts, to apply economic pressure and force agreement.

express, implied or by statute. See: *In U.B.N. LTD v. EDET [1993] 4. N.W.L.R {part 287}* 288.

4.0 CONCLUSION

The basis of collective bargaining as a concept in labour law has been given an expository approach in this unit and students are well equipped, going by the various discussions offered so far.

5.0 SUMMARY

This unit has dealt with the following points:

1. Various definitions of a collective bargain.
2. Its importance.
3. The legal position and effect of a collective bargain.
4. The effect of a collective bargain on an employment contract.
5. required elements to the recognition of an agreement

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you understand by the concept of collective Bargaining?
2. Who are the likely parties of a collective Bargain?
3. What is the likely content of a collective bargain?
4. What are the possible legal limits of collective bargains?
4. Collective bargains are instruments of influence and have no legal implication, discuss this statement.

7.0. REFERENCES/FURTHER READINGS

David Lewis & Malcolm Sargeant: Essentials of Employment Law.

OGUNNIYI O., (2004). Nigeria Labour and Employment Law in Perspective, 2nd ed, Folio Publishers, Lagos.

Atoyebi Kehinde .O, Ogundeji, Musibau .O, Adekunjo Felix .O, Kadiri Kayode

Ibrahim, Taofiq Omotayo .O: IOSR Journal of Humanities and Social sciences. ISSN: 227-0837, ISBN: 2279-0845 vol 13, Issue 6 (Nov-Dec.2013), pp 18-23.

ADEOGUN A. A. (1969) "The Legal Framework of Industrial Relations in Nigeria" Nigeria.

Law Journal, Vol. 3.

The 1999 Constitution of the Federal Republic of Nigeria.

UNIT 2: COLLECTIVE AGREEMENT:

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1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 What is a Collective Agreement?

3.2 Recognition Agreement

3.3 Procedural Agreement

3.4 Parties to a Collective Agreement

3.5 Legal Status of a Collective Agreement

3.6 The Impact of Statute on enforcement of Collective Agreement

3.7 Collective Agreement and Contracts of Employment.

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

Collective Agreement: The practise of collective bargaining resulting in collective agreement has been in existence from as far back as employer and employee relationship existed. It is generally regarded as an agreement between an employer and a union usually reached through collective bargaining which establishes wage rates, hours of labour and working conditions. It has also been defined as⁶ a written, legally enforceable contract for a specified period (usually one year), between the management of an organization and its

⁶ www.businessdictionary.com

employees represented by an independent trade union. It sets down and defines conditions of employment (wages, working hours and conditions, overtime payments, holidays, vacations, benefits, etc.) and procedures for dispute resolution. It is also referred to as a labour agreement, union agreement, or union contract.

2.0 OBJECTIVES

The major aim and objective of this unit is to acquaint the student with a collective agreement, the parties to the agreement, its legal status, the impact of statute on the enforcement of collective agreements and the relationship between collective agreements and the employment contract.

3.0 MAIN CONTENT

3.1 What are Collective Agreements?

They may be regarded as oral or written contracts entered into between an employer or group of employers and a union that is negotiating on behalf of all of the employees that the union represents. In a business context, a collective agreement typically includes any wages, hours, benefits, rules or working conditions that have been mutually agreed upon. A collective agreement is statutorily defined as⁷ any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers, or employers' associations, which relates to one or more of the matters mentioned in S178(2) TULRCA 1992.⁸

⁷ Edinburgh Council V Brown (1999) IRLR 208: where an agreement between the employer and the joint consultative committee constituted a collective agreement.

⁸ Trade Union and Labour Relations (consolidation) Act 1992.

3.2 Recognition Agreement:

The fundamental basis of collective agreement is the Recognition Agreement, which deals first and foremost with the recognition by an employer or association of employers of a specific trade union or a group of trade unions, as the sole bargaining agent for the employees within the bargaining unit in relation to terms and conditions of employment. Conversely, where recognition is not given or is withdrawn, the union will not be able, on behalf of its members, to bargain with an employer or employers association. In Nigeria, the recognition of registered trade union is a matter of statutory obligation for employers, provided that a trade union has more than one of its members in the employment of an employer.

See. NATIONAL UNION OF GOLD, SILVER AND ALLIED TRADE v ALBURY BROTHERS LTD [1929] I.C.R. 84.

In that case, Eveleigh, L.J. held, inter alia, that recognition entailed not merely a willingness to discuss but also to negotiate, that is, negotiate with a view to striking a bargain. Dispute may arise in the absence of any clear stipulations in the recognition agreement of matters for negotiation and for consultation.

See; NIGERIAN BREWERIES LTD v NIGERIAN BREWERIES MANAGEMENT ASSOCIATION [1978-9] N.I.C.R. [H.1] 35

SELF ASSESSMENT EXERCISE 1

Explain the basis of Recognition Agreement and its shortfalls, if any.

3.3 Procedural Agreement

Collective agreement includes the machinery for consultation regarding the settlement of terms, conditions of employment, procedures or stages which the collective parties to the bargaining must or ought to exhaust before embarking on an industrial action and dismissal procedures. The procedural agreements otherwise called the Disputes procedures are usually

worded as follows;“It is agreed that in the event of any difference arising which cannot be immediately disposed of then whatever practice or agreement existed prior to the difference shall continue to operate pending a settlement or until the agreed procedure has been exhausted”A clue from the foregoing example points to the fact that the bane of most industrial actions embarked upon by labour leaders in Nigeria through the Nigerian Labour Congress has been as a result of inability of negotiating parties to strike a bargain.

SELF ASSESSMENT EXERCISE 2

Examine the effect of procedural agreement and the means available before Industrial action is embarked upon both by the employer’s association and trade union.

3.4 Parties to a Collective Agreement

For an agreement to be valid it requires a minimum of two parties, the issue of collective agreement is no way different from the doctrine. It is clear that parties to a collective agreement are the trade union of employees and either an employer or an association of employers.

See; D.C & Co. Ltd v. Deakin (1952) 2 All ER361.

BURTON GROUP LTD v. SMITH {1977} I.R.L.R. 351.

The parties on the employers side would constitute and the following: a union represented by a trade union, union chambers and on the employee side employee unions e.t.c.

3.5 Legal Status of Collective Agreement

The legal significance of a collective agreement has always been uncertain. Some courts have called it a mere gentlemen's agreement, unenforceable at law; it has been likened to a treaty between parties that becomes enforceable by the parties themselves taking steps to execute it and give it the characteristics of a legally enforceable document. It has been viewed rather, as

a mere schedule of terms and commitments, which become part of the individual workers' contracts of employment, whether or not they belong to the union.

Insofar as the collective agreement is a contract at all, it has to be one between the employer and the union. This has led to confusion, since most unions are not incorporated and thus cannot be legal parties to contracts. And if they are not legally recognized parties, they cannot act as plaintiffs in law suits to enforce these so-called contracts; nor can they be sued on them.

In recent years, however, collective agreements are beginning to be recognized as legally binding contracts.

This development means that unions may secure rights for themselves in contracts, over and above the rights secured for their constituents, with the legal power to sue for the enforcement of these rights. This recognition of unions as legal persons, capable of acting as parties to contracts and lawsuits, has largely been the result of legislation.

A collective agreement is presumed not to be a legally enforceable contract by the parties, unless the agreement is in writing and contains a provision that the parties intend for it to be legally enforceable.⁹ The parties may declare that only one or more parts of the agreement are intended to be legally enforceable.¹⁰ It should not be assumed that a collective agreement is legally binding simply because it declares the parties' intention to create legal relations due to the existence of vague or uncertain contracts.

The fundamental question to be asked under this head is "Are collective agreements legally enforceable contracts or are they only binding in honour?" In other words, can a trade union or either an employer or an employers' association legally enforce a collective agreement to

⁹S179(1) TULRCA 1992.

¹⁰S179(3) "

which it is a party? It is submitted that in the absence of statutory imposition of enforceability of collective agreement or where such intention cannot be discerned by the court, such an agreement will not be enforced.

Several judicial pronouncements have been made on this issue but the *locus classicus* is *FORD MOTOR CO.LTD v. AMALGAMATED UNION OF ENGINEERING AND FOUNDRY WORKERS* [1968] 2.Q.B.303, where it was held, inter alia, that collective agreements themselves cannot be termed as contracts in law as the parties do not intend to be legally bound by it.

SELF ASSESSMENT EXERCISE 3

Are collective agreements legally enforceable?

What is the legal relationship between a collective agreement and a contract of employment?

3.6 The Impact of Statute on the Enforcement of Collective Agreement

The primary law governing trade disputes in Nigeria is the Trade Unions Act, Cap 437, Law of the Federation of Nigeria, 1990. Students are enjoined to read and digest the provision of *section 22(1),(2) and (3) of the Trade Union Act, 1990*.

However, the general purpose of this provision of the law is that any collective agreement between two trade unions may constitute a valid contract where the parties so intend. Therefore, the basic element to be considered in circumstances where the question of the ability to bind and the enforceability of agreement between two trade unions arises is that of intention of the parties and the statute books.

3.7 Collective Agreements and Contracts of Employment

The question most frequently asked is; can an employee directly enforce the terms of a collective agreement, though he was not a party to it? *In U.B.N. LTD v. EDET [1993] 4.N.W.L.R {part 287} 288*, the plaintiff contended that her dismissal was wrongful because it was in breach of a collective agreement between her employer and her trade union. It was held, inter alia, that it is not for an individual employee to found a course of action on the agreement to which she was not a party.

However, the court, in that same case, propounded the three methods of effecting such agreement provided it was incorporated into the contract of employment between the employee and the employers as follows:

1. Express Incorporation.
2. Implied Incorporation.
3. Incorporation by statutes.

The above exceptions are easily discernible and understandable in view of the facts that these concepts have been discussed earlier.

SELF ASSESSMENTS EXERCISE 4

Discuss the rule in *U.B.N LTD v. EDET (Supra)*

4.0 CONCLUSION

The basis of collective agreement has been explained in detail and the student is expected to have come to grips with the rudiments thereof.

5.0 SUMMARY

This unit has dealt with the following points:

1. The meaning of a collective agreement.

2. The required elements to the recognition of an agreement
3. The procedural effects of an agreement
4. The recognized parties to a collective agreement
5. The legal Status of collective agreement
6. The impact of status on the enforcement of collective agreement
7. The distinguishing factors and exceptions in collective agreements and contracts of employment.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you understand by the concept of Collective Agreement
2. Who are the recognized parties to a Collective Agreement.
3. Are Collective Agreements legally enforceable.
4. State and examine the Impact of that on the enforcement of collective agreement.
5. Discuss the exceptions to the enforceability of collective agreements by an employee under a contract of employment.

7.0. REFERENCES/FURTHER READINGS

OGUNNIYI O., (2004). *Nigeria Labour and Employment Law in Perspective*, 2nd ed, Folio Publishers, Lagos

ADEOGUN A. A. (1969) “*The Legal Framework of Industrial Relations in Nigeria*” Nigeria. Law Journal, Vol. 3.

The Labour Act of Nigeria

The 1999 Constitution of the Federal Republic of Nigeria.

Unit 3 FRAME WORK AND NATURE:

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1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Legal Framework of Collective Agreements

3.2 Employers Associations

3.3 Trade Unions

3.4 Recognition of Unions

3.5 Employers duty to disclose.

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

Collective bargaining, in reality forms the substitution of bilateral for unilateral decisions in the field of management of labour relations. It normally leads to a collective labour agreement between the negotiating parties. The entire process, from the union's demands to enforcement of the contract, occurs in a complicated cocktail of law versus reality and practicality.

Many are impatient with the law, saying that it defeats the purpose of true collective bargaining especially in Nigeria where government institutions have found a way to circumvent the formation of trade unions by their workers! But all conflicts of interest must be governed by laws of some kind. This is especially true of the struggle for power going on within the labour relations arena. The law *must* set a limit on the manner in which this

struggle is conducted. Then it must define the proper objectives of this conflict for power. Most people probably do not think of collective bargaining as recourse to economic pressures. But the union's best bargaining tools are the strike, the boycott and the picket line all with resultant and clear economic repercussions. It is this process that is defined as the legal framework of collective bargaining and its resultant collective agreement.

2.0 OBJECTIVES

The major aim and objective of this unit is to familiarise the students with the nature, scope and the legal frame work of a collective agreement.

3.0 MAIN CONTENT

3.1 The legal framework of the collective agreements:The ideology seems to be that management has it to give and the employees have it to get; and that the unions are there to see that they get it. This implies that the recognised parties to the agreement are

- i. management and
- ii. the unions and that anything they agree upon is all right.

The bargaining process is seen as a compromise between management willingness, based on the ownership and control of property and the union's monopoly of labour on the other. The agreement represents the whittling down of management's rights due to collective bargaining. Most of these concessions are made on behalf of the employees, to govern the terms of their personal contracts of employment, and are not promises of benefits to the union in reality. The only advantage to the unions perhaps is recognition, some form of union security and the right to initiation fees and union dues, with possible controls over apprenticeship. For

breaches of these commitments, unions have been permitted to maintain actions against employers, including suits. The employees themselves have to sue for the enforcement of the other terms of these agreements, concerning wages, seniority e.t.c.

3.2 Management

Management is the group responsible for the profitable operation of production and distribution systems within the economy. Thus it represents all those who live by wages and salaries earned from employment in production and distribution enterprises. Thus the relationship of trust fostered on 'management' involves them in a very high level of responsibility towards the entire economy including employees, employers and all ancillary stakeholders and in the discharge of this responsibility, 'management' cannot insist on the freedom to do what it finds most convenient thus the need for a legal regulatory framework.

This includes aspects such as:

- i. The protection of individual workers from arbitrary treatment
- ii. Bargaining within the laws and rules that guide development of employers associations, administered prices, labour monopolies, industry wide bargaining and wage pattern setting.
- iii. The protection offered by 'amici curiae'.
- iv. Application of good faith in bargaining by both parties.
- v. The duty of disclosure.
- vi. Enforceability or otherwise of parts of the agreement.

SELF ASSESSMENT EXERCISE 1

1. Who is management?
2. Why is it necessary that their responsibility be regulated by legal framework?

3.3 Employers Associations.

An Employers association is an organisation that consists wholly or mainly of employers of individual proprietors whose primary purposes include regulation of relationships between employers and workers. Or organisations and representative wholly or mainly of constituent or affiliated with the above purposes.

3.4 Trade Unions

Trade Unions have been denied as organisations whether permanent or temporary which consist of workers whose primary purpose includes but is not necessarily limited to the regulation of relationships between workers and employers or employers' associations or constituent or affiliated organisations with those purposes or representatives of such organisations. See the Labour Act.

A trade union cannot take any step for the purposes of which it has been formed unless it has been registered. Although the Trade Union Act does not expressly vest corporate personality on a trade union, the question, nonetheless is whether a trade union is, by indications a legal entity.

One of the fundamental attributes of a legal entity is the ability to sue and be sued. The English House of Lords held in *TAFF VALE RAILWAY CO. v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS* {1901} AC.426 that:

If the legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken to have impliedly given the power to make it suitable in a court of law for injuries purposely there by its authority and procurement “There has not been any dissenting view or opinion on this subject involving trade unions both in England and in Nigeria since the decision in the case cited above and this is indicative of the fact that given the rights and adoptions of a registered trade union, a refusal to call it a “legal entity” may be the result of a mere dislike of a terminology.

4.0 CONCLUSION

This unit has educated the student about the nature and scope of a collective agreement as well as the legal framework within which it is set. It has also introduced the student to Employers associations and Trade Unions.

5.0 SUMMARY

This unit has dealt with the following;

1. The legal framework of collective agreements.
2. The importance of the Legal framework with respect to management/employers and the need for regulatory frame work.
3. Employers associations
4. Trade Unions

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the importance of the existence of a legal framework in the regulation of collective agreements.
2. What are trade unions?

7.0 REFERENCES/FURTHER READINGS

Essentials of Employment Law David Lewis and Malcolm Sargeant

The Nigeria Labour Act.

Ogunniyi O, (2004). *Nigerian Labour and Employment Law inPerspective*, 2nd ed., Folio Publishers: Lagos.

UNIT 4: RECOGNITION OF TRADE UNIONS & DUTY OF DISCLOSURE.

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Recognition of Trade Unions
- 3.2 Employers duty to disclose
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assessment
- 7.0 References/Further Readings

1.0 INTRODUCTION

An independent trade union must be recognised by the employer to benefit from union rights. Recognition in relation to trade union means the recognition by an employer or two or more associated employers for the purpose of collective bargaining. ¹¹“

2.0 OBJECTIVES

This unit will discuss the meaning of recognition a few of its implications and the duty of the employer to disclose.

3.0 MAIN CONTENT

It means the acknowledgement of the Union by an employer or two or more associated employers to any extent for the purposes of collective bargaining. The question of recognition is one for the employment tribunal or courts to decide. It may be inferred from consultations on discipline and or facilitation for union representatives despite the absence of a formal agreement.

See: NUGSAT V ALBURY BROS (1978) IRLR 504.

¹¹ NUGSAT V ALBURY BROS (1978) IRLR 504

See: J WILSON AND ALBURY BROS V USDAW (1978) IRLR 20. See Essentials of Employment Law David Lewis and Malcolm Sargent. 9th Ed. 265, 266& 270 statutory recognition procedures, request for recognition and when negotiation fails, de-recognition.

SELF ASSESSMENT EXERCISE 1

Examine the case of NUGSAT V ALBURY BROS.

3.2 Employers Duty to disclose.

Both parties have a duty to disclose to their various representatives on request, all such information relating to their undertakings as is in their possession or that of any employee or employer. Any undertakings without which the union representative would be to a material extent impeded in carrying out such collective bargaining and any information which it would be in accordance with good industry relationship practise to disclose ought to be disclosed by the parties.

The Union has a right to information on matters not directly connected with the bargain but it must relate to matters in respect of which the Union is recognised.

In R v CAC ex parte BTP Tioxide (1982) IRLR 61, the High Court held that the CAC had misdirected itself in concluding that the union was entitled to information relating to a job, evaluation scheme in respect of which it had no bargaining rights but only the right to represent itself and its members. Information to be disclosed must be relevant and important.

See: Essentials of Employment Law David Lewis and Malcolm Sargent. 9th Ed. Good practise, where disclosure may lead to substantial injury, redress to unions for failure to disclose.

SELF ASSESSMENT EXERCISE 2

1. Discuss the implications of non disclosure by the employer.

4.0 CONCLUSION

There are various duties and regulations that guide the acts of the employer and the trade union's relationship. The purpose is to achieve an aim to that is beneficial to both the employee and the employer. It is important comes to grasps with not only the terms and their meanings but is able to analyse their implications for addressing legal challenges.

5.0 SUMMARY

This unit has dealt with the following;

2. Recognition and its implications
3. Employer's duty to disclose.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the term recognition.
2. What is the significance of an employer's breach of his duty to disclose?

7.0 REFERENCES/FURTHER READINGS

Essentials of Employment Law David Lewis and Malcolm Sargent

Ogunniyi O, *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Folio Publishers, Lagos (2004).

MODULE 2 TRADE UNIONS

UNIT 1: FORMATION

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Definitions

3.2 What are Trade Unions?

3.3 Formation and Registration of Trade Union

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

UNIT 1

1.0 INTRODUCTION

The doctrine of unionism has been in existence from time immemorial. It has been functioning in various fields of human endeavour, including professional bodies, artisans and others. The aim of the association or union in most cases often include (but not limited to) the regulation of conduct and affairs of its members. In the same vein, employers of labour do form associations and unions for the purpose of protecting their various interests' in their relationship with their employees who usually, like their employers; do form associations and unions for the purpose of protecting their interests under their various contracts of employment. This is the basis of the establishment and formation of Trade Unions.

2.0 OBJECTIVES

The major aim and objective of this unit is exposing to the student the real reasons why we have Trade Unions as a concept in labour law in Nigeria. It will further state the major particulars in relation to the law that provide for the formation of Trade Union in Nigeria. Attempt will also be made at going to the rest of the formation and registration of trade Union with a view to establish their legal status and so much more.

3.0 MAIN CONTENT

3.1 Definitions: The parent law for the establishment of Trade Unions in Nigeria is the

Trade Unions Act, cap.432, laws of the federation of Nigeria, 1990. Trade union is defined by the act in section 1 (1) as *“Any combination of worker or employer, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include provision of benefits for its members.”* From the foregoing definition two conditions must exist for the purpose of determining whether an association, for purposes of registration, qualifies to be treated as a trade union. These are that the:

1. Association must comprise workers or employers; and
2. Main or principal purpose of the association must be to regulate the terms and conditions of workers.

1. Association of Workers

From the above definition only an association of workers or employers is registerable as a trade union. By the provisions of Section 52 of the Trade Unions Act, of a worker means, *“Any employee, that is to say any member of the public service of the federation or of a state or any individual (other than a member of any such public service) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing and whether it is a contract personally to execute any work or labour or a contract of apprenticeship.”*

2. The Principal Purpose

The general principle of law in this regard is that whatever other lawful purposes a trade union allows itself under its rules book or constitution, its principal or overriding purpose must be the regulation of terms and conditions of employment of worker. In line with the general law and by the provisions of section 7(1) (d) of the Trade Union Act, where the principal purpose for which a trade union is being carried on has ceased to be that of

regulating the terms and conditions of the employment of worker, the registrar of trade unions is empowered to cancel the registration of such a union.

The court, in order to determine what the principal purpose of an association is, always peruse the rulebook or constitution of the association in its totality, especially its objects or purposes clauses See *RE: UNION OF IFELODUN TIMBERS DEALERS AND ALLIED WORKMEN {1964} 2 ALL N.L.R. 63.*

It is also important to point out that the regulation of terms and conditions of employment of workers may be affected by a trade union through

- a) Collective bargaining
- b) Industrial actions

SELF ASSESSMENT EXERCISE 1

1. Define what are trade unions in line with the relevant provision of the Trade Union Act, 1990.
2. Examine the two criteria for the registration of a Trade Union.

4.0 CONCLUSION

This unit has exposed the student to the way and manner Trade Unions operate in Nigeria vis-à-vis the Nigeria Labour Law. Further study of the provisions of the law as stated above will improve the knowledge of the student in respect of Labour Law matters.

5.0 SUMMARY

This unit has dealt with the following;

1. Statutory definition of Trade Unions.
2. Distinguishing factors between association of workers or employees and the principal purpose.
3. General and statutory requirements for the formation and registration of Trade Union.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define Trade Unions.
2. What is Trade Unionism
3. What are the statutory requirements for the formation of a trade union?

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O, (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Folio Publishers: Lagos.

UNIT 2 RIGHTS AND OBLIGATIONS

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Union Membership and Office
 - 3.2 Union Rules Book
 - 3.3 Suspension and Expulsion of Members
 - 3.4 Union Membership and the Rules in FOSS VHARBOTTLE
 - 3.5 Union Membership and Closed Shop
 - 3.6 Exhaustion of Internal Remedies
 - 3.7 Re-Organisation of Trade Unions
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Trade unions and occupational associations have a joint responsibility with the employer to create a workplace free from discrimination.¹²

- i. Unions assist with human rights issues within the employment context.

By:

- guiding a member who has a human rights issue through the employer's internal complaint resolution process;
- informally assisting members to resolve a complaint;
- advocating with the employer on behalf of the member;
- helping a member file a grievance based on a human rights issue;
- helping a member make a human rights complaint with the Human Rights Commission; and
- making a policy grievance against the employer on behalf of the union's members.

- ii. The union must provide services to all members. A member who has an issue has a right to full service from the union regardless of what the issue involves. For instance, the union has a responsibility to help a member who has a mental health issue access the employer's internal complaint resolution processes and grievance procedures in addition to making a human rights complaint. Also, a member who has made a complaint against the union still has the right to the services normally offered by the union.

¹²**Note:** For ease of reference, the term "union" will be used to encompass trade unions or occupational. The term "member" will be used to describe a person who is a member of a union or occupational association.

- iii. Resolution of members complaints. The union can assist with this process by:
- outlining the employer's procedures for resolving a complaint;
 - referring the member to the employer's policy;
 - going to any informal meetings with the member;
 - advocating with the employer on behalf of the member;
 - helping the member to clarify how the alleged discrimination has affected them; and
 - assisting the member in identifying potential resolutions.
- iv. Dealing with issues between members: Even though a complaint may be initiated by one union member against another union member, the union still has a responsibility to ensure that both members are fairly represented. The union may assist a member who has been terminated based on allegations of sexually harassing behaviour, while at the same time assisting the person who has alleged harassment. In some cases the union has decided to represent a member in one aspect of their grievance, while refusing to grieve another aspect, such as the harassment issue. The union should consult its legal counsel on the duty to fairly represent members before making a decision on how to handle a case involving conflicting interests. The union, along with the employer, must remember its duty to create a discrimination-free work environment.
- v. A union can assist a member who has potentially been discriminated against by:
- keeping an open dialogue;
 - making sure the member is aware of meetings and decisions that affect their interests;
 - consulting with the member about their needs; and
 - referring the member immediately for a consultation with the Commission.
- vi. Advocacy: In another situation, a member might need certain accommodations for a disability. The union can help the member clearly express their accommodation needs.

Other union members and co-workers may need education and information about the duty to accommodate to understand why a member is being accommodated. An open line of communication between affected individuals will help the union get the necessary information to resolve the issue.

vii. Retaliation

A union may not retaliate against a member for making a complaint

2.0 OBJECTIVES

The major aim and objective of this unit is exposing to the student the real reasons why we have Trade Unions as a concept in labour law in Nigeria and explain the rules, duties and obligations of trade unions as permitted under the Nigerian Law. The formation and registration of trade Union within the Nigerian Law will also be discussed.

3.0 MAIN CONTENT

3.1 Union Membership and Office

See – Sec. 37&40 of the 1999 constitution of Nigerian

See. *OSAWA v. REGISTRAR OF TRADE UNION {1985} I.N.W.L.R{PT.4}755.*

3.2 Union Rule Book

See Section 4(2) of Trade Union Act, 1990. generally.

The general rule is that a registered trade union has a statutory duty to deliver or send a copy of its rule to any person on request and on paying of the prescribed fee. However, it is an offence for any person, with the intent to mislead or defraud, to supply or lend to any member or prospective member of a registered union a fake copy of its rules. The rules of a registered trade union constitute a contract between the union and its members. The contract is exhaustive as to the purposes of the union and the rights and obligations of its members.

Therefore, it will be ultra vires the union to do a thing not provided for in its rules, that is, by the terms of the contract. However, there is a limit as to the kind of contract which a trade union can by its rules make with its member.

SELF ASSESSMENT EXERCISE 1

What is the significance of the Union Rule Book?

3.3 Suspension and Expulsion of Members

The authority of a trade union to act on behalf of its members is derived from its rulebook. A trade union can exercise only those disciplinary measures over its members that are stipulated in its rules. The following are the criteria required by the courts to hold any of the disciplinary measures taken by a union against its members;

1. The rules should expressly grant to the Union the power to take the disciplinary measure in question.
2. The union must in taking disciplinary measures comply with the rules of natural justice, and with such other procedures stipulated in its rules.
3. Even where there is a power to discipline, the union can only impose the specific section stipulated in the rules.

SELF ASSESSMENT EXERCISE 2

Enumerate and explain the criteria required by the court before disciplinary measures taken by a union against its members can be upheld.

3.4 Union Membership and the Rule in Foss v. Harbottle

The common law principle settled in *FOSS v. HARBOTTLE* {1843} 2.Hare 461 states that where a wrong is done to a company or where there is an irregularity in its internal management which is capable of being ratified by a simple majority of the members, the court will not interfere at the suit of a minority of the members to rectify the wrong or to

regularize the irregularity.

This rule has given rise to two other rules which regulate the institution of actions in respect of wrong done to a body corporate and other incorporated associations. These rules are;

1. Actions in respect of wrongs done to a company must be brought by the company and in its name.

2. The court will not interfere in respect of actions if the wrong done or the irregularity complained of is within the power of the majority to rectify.

The exceptions to these rules are the following;

Where the action is brought to restrain the union from ultra vires act.

Where the action is to restrain the union from doing by a simple majority that which ought to be done by a special majority the rule will be excluded.

Where the action is to prevent a fraud on the minority.

Where the action is brought to restrain the invasion or violations of membership rights.

SELF ASSESSMENT EXERCISE 3

Discuss the exceptions to the rule in *FOSS v. HARBOTTLE*.

3.5 Union Membership and the Closed Shop

The term “Closed Shop” is a colloquialism for “*Union Management Agreements*”, that is, collective agreement between trade unions and employers, whereby “employees come to realise that a particular job is only to be obtained or retained if they become and remain members of one of a specified number of trade unions. In pre-entry closed shop, the prospective employee must first join a particular union before he could be employed. Further to this, the employee must join the required union within a short time after acquiring employment. It is however important to note that in any trade or industry in which the closed shop operates, the consequences of an employee losing his union membership may be disastrous to his capacity to earn a living. The concept of closed shop is an aspect of the

English Labour Law, which was not incorporated into Nigeria Labour Law. By virtue of section 40 of the 1999 Constitution of the Federal Republic of Nigeria, the closed shop concept does not operate in Nigeria.

SELF ASSESSMENT EXERCISE 6

Discuss the concept of closed shop in relation to Labour Law and Trade Union.

3.6 Exhaustion of Internal Remedies

Usually, the rules of the union may expressly provide that a “*member cannot sue the union until he has exhausted all internal remedies provided by the rules*”. This provision is available, to a union member who has a right of action against the union. Where the rules provide for internal reliefs, an aggrieved member may be required by the court to exhaust such domestic relief before he could be heard.

There are four exceptions to this rule as follows;

1. If the member can show cause why the court should interfere with the contracted relationship between him and his union. The court will interfere where a member has been disciplined in breach of the rules of natural Justice.
2. Where non-intervention will result in the deprivation of some special membership right, e.g. the right to union office.
3. Where the decision of the union is ultra-vires, in which case, there is no decision in law from which the member would be obliged to appeal against.
4. Where there is no express provision, the courts can readily grant relief without prior recourse to the domestic remedies.

SELF ASSESSMENT EXERCISE 6

State the general rule and discuss the exceptions to the exhaustion of internal remedies rule in Trade Unionism.

3.7 Re-organisation of Trade Unions

See the following enactments.

- 1) Time Union Ordinance of 1938.
- 2) Trade Union {Amendment} Ordinance caps 200 of 1958.
- 3) Trade Union {Amendment} Act of 1978-1978.
- 4) Trade Union Act, cap. 437, LFN, 1990
- 5) Trade Unions {Amendment} Decree No. 4 of 1996.

4.0 CONCLUSION

This unit has exposed the student to the way and manner Trade Unions operate in Nigeria vis-à-vis the Nigeria Labour Law. Further study of the provisions of the law as stated above will improve the knowledge of the student in respect of Labour Law matters.

5.0 SUMMARY

This unit has dealt with the following;

1. Legal position of Union membership and the office.
2. Purpose and significance of the Union Rule Book.
3. Legal requirements for the suspension and expulsion of members of a trade union.
4. Union Membership and the rule in *FOSS v. HARBOTTLE*.
5. Union membership and the concept of the closed shop.
6. General rule and exceptions in Trade Unionism.
7. Relevant statutes in recantation to the re-organization of Trade Unions.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the exceptions to the rule in *FOSS v. HARBOTTLE*.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O, (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Folio Publishers: Lagos.

UNIT 3 CRIMINAL AND CIVIL LIABILITY

CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 The Torts

3.1.1 Conspiracy

3.1.2 Inducing Breach of Contract

3.2 Section 23 of Cap 437

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

At common law it is impossible for a trade union to engage in any effective industrial relations activity without falling foul of some established legal rule. This unit is meant to deal with those areas of contracts of employment that may result in tortious liability either by the employee solely or on behalf of the employee as distinguished from various liabilities. This examination will be in relation to trade disputes as governed and protected by the relevant statutes.

2.0 OBJECTIVES

This unit deals, first with those common law torts which a trade union, its officials and members are prone to commit in the cause of an industrial action.

Secondly, it examines the extent of statutory protection afforded to trade unions and unionists from those torts, in the prosecution of trade dispute.

3.0 MAIN CONTENT

The main body of this unit has been divided into several segments, for ease of reference. Three basic segments are easily noticeable.

3.1 The Torts

Torts could either be criminal or civil. In this unit therefore, the two types shall be discussed with a view to determining how they relate to trade dispute.

3.1.1 Conspiracy

A. Criminal Conspiracy

In *CROFTER HAND – WOVEN HARRIS TWEED CO. LTD v. VELTCH* (1942) A.C.435, Viscount Simon, L. C. stated that;

“Conspiracy, when regarded as a crime, is the agreement of two or more persons to effect any unlawful purpose, whether as their ultimate aim, or only as a means to it, and the crime is complete if there is such agreement, even though nothing is done in pursuance of it”.

While at common law, the agreement of two or more persons to do any unlawful act by an unlawful means is in itself a crime; in Nigeria, for such an agreement to constitute criminal conspiracy the act done, or the means adopted by the conspirators must be an offence, defined and the penalty for it prescribed, in a written law.

See section 36 (12) of the 1999 Constitution See also AOKO V FAGBEMI {1961} 1 ALL C.L.R. 400.

See also section 518 A (1) of the criminal code cap 77, L.F.N.1990.

However, it is important to state that offence, under *section 518A (1) C.C.* does not include an offence punishable only by a fine. Thus the agreement of two or more members or officials of a trade union to do an act prohibited by *sections 516-518 Criminal Code.* “*In contemplation*

orin furtherance of a trade dispute” will not amount to criminal conspiracy if the act is not an offence punishable with imprisonment.

B. Civil Conspiracy

Conspiracy as a tort has two forms, viz; conspiracy to effect an unlawful act and conspiracy to injure. The difference between the civil conspiracy to effect an unlawful act and criminal conspiracy is that, in the former, the agreement does not constitute conspiracy for the conspirators to be liable. The conspirators must have done some act in pursuance of their agreement to the damage of the plaintiff.

On the other hand, criminal conspiracy is constituted by the agreement itself. There is no defence, at common law, to civil conspiracy to effect an unlawful act. Conspiracy to injure does not involve the use of any unlawful means, such as crime or tort, in effecting the purpose of the conspirators; otherwise, it will cease to be conspiracy to injure and might become criminal conspiracy or other form of civil conspiracy.

Therefore, the conspirators will be liable for the tort of conspiracy to injure if their real or predominant purpose is to inflict damage on another person in his trade.

3.1.2 Inducing Breach of Contract

There are two major forms of inducement, which may result into breach of contract. There are direct and indirect inducements.

In direct inducement, the defendant personally intervenes in a contractual relationship by persuading any of the contracting parties to break his contract with the other party.

In indirect inducement, the defendant does not use personal persuasion on one of the contracting parties, but either does a wrongful act e.g. commits a breach of contract himself, or procures a third party e.g. an employee of one of the contracting parties, to commit a breach of his contract of employment as a result of which one of the contracting parties are rendered incapable of performing his contractual obligations.

The high point of this rule is that in indirect inducement, to make the defendant liable, the plaintiff must prove inter alia, the unlawful means employed by the defendant while in indirect inducement; is the personal intervention that is wrongful act.

Elements of the Tort

Three elements must be proved by the plaintiff against the defendant in order to succeed in an action for inducing breach of contract.

I. Knowledge and Intention

The plaintiff must prove that the defendant knew of the existence of the contract between the plaintiff and the third party and intended to induce or procure its breach. It is not mandatory for the plaintiff to prove that the defendant knew the exact terms of the contract.

II. Interference

The plaintiff must also prove that the action of the defendant which constitutes the undue interference which induces the other contracting party was responsible for his action which caused the breach of the contract between them. A mere call for help would not be sufficient inducement while the offer of a higher pay by the defendant will be inducement or interference which may procure the breach.

III. Breach and Damage

The plaintiff must also prove that the inducement or interference caused a breach of contract and that he has suffered damage consequently.

Defences

Some of the defences available to a defendant in tortious liability in respect of trade dispute is as discussed hereunder;

I. Justification

At common law justification is a defence to the tort of inducing breach of contract. The defence consists in the admission of the act complained of but with the plea that the defendant

was justified in action as he did and ought reasonably to be exercised having regard to the surrounding circumstances.

Justification is a defence to the tort of conspiracy to injure, if the predominant purpose of the conspirators, (who are usually officials and members of a trade union) is not to injure the plaintiff but to forward and protect their legitimate interests. However, trade union's interests have not been accepted by the courts as a justification for the tort of inducing breach of contract.

II. Statutory Defences

See generally section 43(1) of the Trade Union Act, cap 437.

Note: that for this defence to be negated it must be proved that;

- a) The tort was committed in contemplation or in furtherance of a trade dispute.
- b) The contract breached by the inducement was a contract of employment. Breach of any other form of contract will not be protected.

III. Intimidation

The general position of the law in respect of this defence is that it is what the defendant has threatened to do that determines whether the tort of intimidation has been committed or not. If what the defendant has threatened to do is unlawful, he would be liable to the party who has suffered damage as a result of the person threatened complying with the threat. However, if what the defendant has threatened to do is what he has a right to do, that is, when no unlawful means is involved, he would not have committed the tort of intimidation even though a party has suffered damage as a result of the person threatened complying with the threat.

SELF ASSESSMENT EXERCISE 1

- 1) Define conspiracy in relation to trade dispute.
- 2) Differentiate between civil and criminal conspiracy with respect to trade dispute.
- 3) Examine the features of inducing a breach of contract.

4) Examine the elements of the tort and available defence to a defendant.

3.2 Section 23 of Cap 437

The Trade Union Act, cap 437, LFN, 1990 provides a variety of protection to unionists in the exercise of their rights and protection of their members. Of particular importance is the protection granted by section 23(1) of the Trade Union Act. In the same vein, section 23 of the Act provides the union absolute immunity from tortious liabilities provided, the liabilities arose from torts committed in contemplation or in furtherance to a trade dispute.

Sec. 23(1) of the Trade Union Act reads; *“An action against a trade union {whether of workers or employers} in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation or in furtherance to a trade dispute shall not be entertained by any court in Nigeria.”*

The following points are deducible from the foregoing provision:

- I. It is the trade union as a registered association under the trade unions Act that is protected- agents of the union whether officials or members are not protected.
- II. The section protects the union whether it is being sued in its registered name or in a representative capacity.
- III. The section does not debar a trade union from suing for torts committed against it.
- IV. The section affords protection only when a trade dispute is contemplated or being furthered.

SELF ASSESSMENT EXERCISE 2

What is the legal effect of the provision of section 23(1) & (2) of the

Trade Union Act, cap 437, LFN, 1990 with respect to protection granted to unionists?

4.0 CONCLUSION

In this unit, we have been able to see what usually constitutes tortious liability. We have also been able to know what trade dispute is vis-a-vis the relevant defence to such disputes as provided by the enabling statute.

5.0 SUMMARY

Through this unit, efforts have been made to expand the knowledge of the student with a view of problems when it comes to the point of implementation of the terms. By this unit, student should understand:

- 1) Basic concept of torts in relation to trade dispute and trade unionism
- 2) Differences between criminal and civil conspiracy
- 3) Elements of the torts of conspiracy
- 4) Available choices for the defendant
- 5) Meaning of trade dispute

6.0 TUTOR-MARKED ASSIGNMENT

- 1) Define conspiracy in relation to trade dispute.
- 2) What is trade dispute?
- 3) Examine the elements of the tort of conspiracy and the available Differences to a defendant.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O. (2004). *Nigeria Labour and Employment in Perspective*, 2nd Ed, Folio Publishes Ltd, Ikeja, Lagos.

Workmen's Compensation Act, Cap 70 LFN 1990.

Trade Dispute Act, Cap 432 LFN 1990.

UNIT 4 SETTLEMENT OF TRADE DISPUTES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Parties
 - 3.2 Arbitration
 - 3.3 The National Industrial Court
 - 3.4 The Jurisdiction of the Court
 - 3.5 Enforcement of the Award
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor-Marked Assignment
- 7.0. References/Further Readings

1.0 INTRODUCTION

The purpose of this unit is to examine the various modes or means by which disputes arising from industrial relations are settled. This is aimed at reviewing the enabling laws connected thereto.

2.0 OBJECTIVES

The relevant and most prevailing statute in relation to trade disputes is the Trade Disputes Act, cap 432, LFN, 1990. The statute has by its relevant provisions laid down the rules to be followed in case of an industrial dispute and the likely consequences in the event of nonconformity with these rules. This unit is meant to discuss the various modes or means of settlement of industrial disputes, their advantages, disadvantages and suggestions for improvement.

3.0 MAIN CONTENT

The basic law in relation to settlement of industrial or trade dispute is the provision of section 17(1) of the Trade Disputes Act, cap 432, LFN, 1990. This section provides that;

“An employee shall not declare or take part in a lock –out and a worker shall not take part in a strike in connection with a trade dispute where.”

- a) The procedure specified in section 3 or 5 of this Act has not been complied with in relation to the dispute; or
- b) A conciliator has been appointed under section 7 of this Act for the purpose of effecting a settlement of the dispute; or
- c) The dispute has been referred for settlement to the industrial panel under section 8 of this act, or
- d) An award by an arbitration tribunal has become binding under section 12 (3) of this act; or
- e) The dispute has subsequently been referred to the National Industrial Court under section 13(1) or 16 of this act; or
- f) The National Industrial court has issued an award on the reference.

Section 17 (2) provides for the punishment of anyone who contravenes the provision of section 17 (1) of the act.

3.1 The Parties

The existence of a dispute or disagreement necessarily means that there are parties to the dispute or disagreement. Normally, it requires a minimum of two parties to a dispute. In the case of industrial disputes, it could arise between employer and worker or workers inter se.

Section 52 of the Trade Union Acts defines a “worker” and a similar definition is contained in Section 1 of the Workmen’s Compensation Act.

Section 43 (1) (c) of Trade Union Act is to the effect that a worker in respect of whom a dispute arises need not be in the employer’s business.

Naturally, human interaction, especially in an industrial setting must of necessity produce conflicts or disputes, despite the virtual prohibition of strikes and lock outs by Section 17 (1) of the Trade Disputes Act. The implication of the foregoing exposition is that for there to be an industrial conflict or trade dispute there must be an employer and an employee making up the parties to the dispute.

SELF ASSESSMENT EXERCISE 1

What are the distinctive features of section 17(1) of the Trade Disputes Act?

3.2 Arbitration

Despite this virtual prohibition of strike and lock outs, there have been strikes and lock outs. There is no doubt that the intervention of a third party will be inevitable where the machinery of collective bargaining process is inadequate. The government has often intervened by providing the required machinery as exemplified by the enactment in 1941 of the Trade Disputes {Arbitration and Inquiry} Act which vested the power for the resolution of industrial disputes in the government.

The Act contains some limitation in that the powers of the government could be exercised only where the collective parties consented to their use. In effect, the Minister of Labour could neither appoint a conciliator nor set up an arbitration tribunal for the dispute unless the parties so requested.

Once a dispute has been referred to the Arbitration Panel, the chairman constitutes an arbitration tribunal from among the members of the panel.

The tribunal may consist of;

- a) A sole arbitrator; or
- b) A sole arbitrator assisted by assessors; or
- c) One or more arbitrators under the presidency of the chairman or Vice-chairman.

An arbitration tribunal has twenty-one days, or such longer period as may be allowed by the minister, to make an award. The award is not communicated to the parties but to the minister, who notifies the parties of the award.

The parties have seven days from the date of the notification to object to the award. In the absence of any objection, the minister is bound to confirm the award by a notice of confirmation of the award published in the Federal Gazette. With the confirmation of the award, it becomes binding on the parties concerned. See sections 8, 12 and 13 of the Trade Disputes Act in relation to Arbitration.

In order to facilitate the speedy settlement of trade disputes, and to free the panel from suspicion, the disputants should and are usually allowed direct access to the panel and thereafter to the National Industrial Court.

SELF ASSESSMENT EXERCISE 2

Explain the mode of settlement of Trade Disputes through Arbitration Tribunal.

3.3 The National Industrial Court

Section 19 of the Trade Disputes Act established the National Industrial Court. The court has a president and four other members. The members are appointees of the President of the Federal Republic Nigeria after consultation with the Federal Judicial Service Commission. One of the requirements of a candidate for the post of the President of the court is that such person must either have been a High Court Judge or a person qualified to practice as a Solicitor and Advocate in Nigeria and has been so qualified for not less than ten years. The President of the court deals with matters referred to it with the assistance of assessors who shall consist of two nominees of the employer(s) concerned. These are chosen from a panel of employers representative by the minister under section 43 of the Act, and two nominees of the workers concerned, chosen from a panel of workers representatives.

SELF ASSESSMENT EXERCISE 3

- 1) What are the roles of assessors appointed to assist the President of the National Industrial Court?
- 2) The appointment of the President of the National Industrial Court is political. Discuss.

3.4 The Jurisdiction of the Court

The power and authority to adjudicate on industrial and trade disputes is conferred on the National Industrial Court by the provision of section 20 of Trade Disputes Act. This section confers exclusive jurisdiction on the court to make award for the purpose of settling trade disputes and determining questions as to the interpretation of any collective agreement, any award made by an arbitration tribunal or by the court itself under part 1 of the Act. It also includes the terms of settlement of any trade dispute as recorded in any memorandum under section 7 of the Act. By the provisions of section 20 (3) of the Act, no appeal should lie to any other court or person from any determination of the National Industrial Court. In the same vein, in spite of the unlimited powers of state high courts, it has no jurisdiction in industrial or trade dispute matter. This appears as being inconsistent with the provisions of section 272 (1) of the 1999 constitution which confers unlimited civil and criminal jurisdiction on state High Courts and has been said to be void to the extent of that inconsistency. This was confirmed by the Supreme Court in *W.S.W. LTD v. IRON and STEEL WORKERS UNION OF NIGERIA* {1987} L.N.S.C.C.133.

SELF ASSESSMENT EXERCISE 4

Compare the jurisdiction conferred on the National Industrial Court by section 20 of the Trade Disputes Act and the provisions of Section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria.

3.5 Enforcement of Award

The National Industrial Court, under section 20(1) of the Act, has thirty working days within which to determine any dispute referred to it. The award of the court becomes binding on the employers and worker concerned either from the date of the award or from such date as may be specified in the order. The Court, as well as the Industrial Arbitration panel, is not only empowered to enforce their awards but also to commit for contempt any person or a representative of a trade union who does any act or commits any omission which in the opinion of the court or the panel constitutes contempt of the court or panel.

SELF ASSESSMENT EXERCISE 5

The National Industrial Court and the Industrial Arbitration Panel have power as of right to enforce awards granted by them. Discuss.

4.0 CONCLUSION

The rate at which the law in relation to industrial trade dispute settlement developed in Nigeria is not comparable with what obtains in other climes of similar jurisdiction. However, what obtains now is still comparable with other countries of the world.

5.0 SUMMARY

The student has been shown the relevant provisions of the law in relation to settlement of industrial and trade disputes in Nigeria with particular reference to the arbitration panel, the National Industrial Court, the jurisdiction of the court, the modes of enforcing the award and primarily the parties' necessary in a settlement of trade dispute matters.

6.0 TUTOR-MARKED ASSIGNMENT

- 1) What do you understand by the term "settlement of industrial or trade dispute?"
- 2) Examine the effect of section 17(1) of the Trade Dispute Act; cap 432, LFN.1990.
- 3) Who are the necessary parties to an industrial or trade dispute?

- 4) What are the roles of an arbitration panel in trade dispute settlement?
- 5) The jurisdiction of the National Industrial Court under section 20 of the Trade Dispute Act is unfettered. Discuss?
- 6) The enforcement of awards is as of right. Discuss.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O., (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Lagos.

Munkman, *Employer's Liability* 9th ed.

UNIT 5 CONCILIATION AND ARBITRATION

CONTENTS

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
 - 3.1 Conciliation
 - 3.2 Arbitration
 - 3.3 Emergency Procedures
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Much has been said about the settlement of disputes in the last unit. This unit explains better and broadens our understanding of the concept of dispute resolution. There have been statutory attempts to improve and provide ways of settling disputes when they arise.

Much could be done in the settlement of dispute by arbitrators and conciliators. There are also emergency procedures to avoid the breaking down of disputes.

2.0 OBJECTIVE

This unit is to discuss other means of resolving industrial disputes.

3.0 MAIN CONTENT

This unit dwells on dispute resolution. Discussions will also be on conciliation down to the doctrine of arbitration and to that of emergency procedure available when needed.

3.1 Conciliator

It is the first type of mechanism bearing upon the settlement of disputes in industrial relations. The idea is aimed at the prevention and settlement of trade disputes where a difference arises between employers and workmen or between different classes of workmen.

The purpose of this aspect of law is to enquire into the circumstances of the dispute and to take such steps as may be expedient to bring the parties together under the presidency of a conciliator mutually agreed upon or nominated by some other persons or body with a view to settling the dispute amicably. On the application of the interested employers or the employees and after taking into account existing means of conciliation, a conciliator or a board of conciliators is appointed.

The aggrieved party can proceed to the board of conciliators for proper and efficient conciliation on the dispute. The power to appoint a conciliator can be by either of the party while that of the arbitrator can be exercised on the application of both parties. The main purpose of the use of conciliator is confined to the effort to bring the parties together in the hope that a common discussion will reveal a means of settlement acceptable to both parties.

The issue of conciliation dates back to the history of Labour Law worldwide.

SELF ASSESSMENT EXERCISE 1

Define the word conciliator and explain its usefulness to the doctrine of dispute resolution.

3.2 Arbitration

The arbitrator generally fulfils a judicial role. He is concerned with laws and facts and the parties before the submission to arbitration normally agree, in advance, to accept and act upon his findings. Despite the virtual prohibition of strike and lock outs, there have been strikes and lock outs. There is no doubt that the intervention of a third party will be inevitable

Where the machinery of collective bargaining process is inadequate. The government has often intervened by providing the required machinery as exemplified by the enactment of the Trade Disputes {Arbitration and Inquiry} Act which vests the power for the resolution of industrial disputes in the government.

However, the Act contains some limitation in that the powers of the government could be exercised only where the collective parties consent to their use. In effect, the Minister of Labour could neither appoint a conciliator nor set up an arbitration tribunal for the disputes unless the parties so requested. Once a dispute has been referred to the Arbitration Panel, the chairman constitutes an arbitration tribunal from among the members of the panel.

The tribunal may consist of;

- (a) A sole arbitrator; or
- (b) A sole arbitrator assisted by assessors; or
- (c) One or more arbitrators under the presidency of the chairman or vice-chairman.

An arbitration tribunal has twenty-one days, or such longer period as may be allowed by the minister, to make an award. The award is not communicated to the parties but to the minister, who notifies the parties of the award. The parties have seven days from the date of the notification to object to the award. In the absence of any objection, the minister is bound to confirm the award by a notice of confirmation of the award published in the Federal Gazette. With the confirmation of the award, it becomes binding on the parties concerned.

The result is that in normal circumstances the decision of an arbitrator may, by the leave of the court or a judge, be enforced in the same manner as a judgement. See the provision of sections 8, 12 and 13 of the Trade Disputes Act in relation to Arbitration. In order to facilitate the speedy settlement of trade disputes, and to free the panel from suspicions, the disputants should and are usually allowed direct access to the panel and thereafter to the National Industrial Court. It is further suggested that an industrial tribunal should give its award in the open and the award should be binding from the day it was made or such other date as may be specified in the order.

SELF ASSESSMENT EXERCISE 2

Explain the mode of settlement of Trade Disputes through Arbitration Tribunal.

3.3 Emergency Procedure

This is the procedure necessary in times of urgency in a situation of strikes or lock out which may cause an interruption in the supply of goods or foods, provisions of services of such a nature or on such a scale that it is likely to be gravely injurious to national security, create a serious risk of disorder, endanger lives of a substantial number of persons or expose a substantial number of persons to serious risk of disease or personal injury. This is done where the state is of the opinion that such conditions exist as a result of a strike or irregular industrial action short of a strike or of a lock out having begun or being likely to begin and that it would be conducive to settlement by negotiation, conciliation or arbitration if this action were discontinued or differed. In this instance an application may be sent to the Industrial Court, which must specify the persons apparently responsible for the action or threatened action. These become parties to the proceedings. The process of emergency procedure is referred to the Industrial Court and the court has to satisfy itself that there is indeed an emergency situation that requires the attention of the court. It could make an order specifying the area of employment to which it shall apply, the parties to be bound, the effective date and

the period it is to last. The term of the order must only be made to parties with responsibilities, prohibit the calling, organising, procuring or financing of a strike, or anyirregular industrial action short of a strike or threatening to do so.

SELF ASSESMENT EXERCISE 3

Explain briefly the necessity for emergency procedure.

4.0 CONCLUSION

It is important to note that in an industrial relations environment, the idea of industrial actions is used by workers to drive home their point to their employees who are out to mete injustice at them. Conciliation among other means is a way of remedying the injustice.

5.0 SUMMARY

1. We have discussed the idea of conciliator who is appointed withthe consent of either of the parties aggrieved in other for us to achieve a good purpose.
2. Also discussed further is the arbitrator which has been discussedin the last unit, but more extensively it has been dealt with withinthis unit as it relates to the labour law world over.

6.0 TUTOR-MARKED ASSIGNMENT

1. Briefly explain the purpose of a conciliator.
2. The Arbitrator in a Process of Arbitrating in trade dispute is asimportant as a conciliator Explain.
3. Briefly explain the Emergency Procedure.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O., (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Lagos.

Munkman, *Employer's Liability* 9th ed.1.0 Introduction

MODULE 3 HEALTH AND SAFETY

Unit 1 Protecting Health and Safety

Unit 2 Liability

Unit 3 Defences

Unit 4 Workmen's Compensation Act

UNIT 1 PROTECTING HEALTH AND SAFETY

CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 The Factories Act

3.2 Nature of Fencing

3.3 General Provisions as to Health

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

In common law, there are certain duties, which an employer owes the employees. The point however must be made that apart from this common law duties, growing industrialization has brought into existence a number of statutes designed to govern, order and regulate industrial activities generally. The purpose of this unit is to examine these various statutes as they concern the relationship between the employer and employee.

2.0 OBJECTIVES

In this unit we will review and examine the relevance of those statutes designed to govern, order and regulate industrial activities generally. Some of these statutes can be viewed first as instruments designed to promote the health, safety, welfare and security of the worker and second, as instruments for providing compensation for the employees in case of injury.

3.0 MAIN CONTENT

3.1 The Factories Act

The Factories Act, cap 126 laws of the Federation of Nigeria {LFN}1990 is primarily designed to govern order and regulate industrial activities generally. In essence, its main duty is to prevent occupational accidents and diseases in factories. In *PULLEN v. PRISON COMMISSIONERS* {1957}3 ALL E.R.470, Lord Goddard, C.J. commenting on the object of the English Factories Act of 1937 said;

“The factories Act, 1937 is an Act which is designed for the protection of persons working in factories, that is to say, it is an Act which is intended to put obligations on employers of labour in factories, to take various precautions for the protection of their work-people...”

Section 89(1) of the Factories Act, 1990 which is in *pari-materia* with section 175 of the English Factories Act, 1961, which replaced section 151 of the 1937 Act defines what a factory is. Students are hereby directed to see the full text of that section. It is also important to state at this point that it has earlier been said that Nigerian Labour Law principally derived from English Labour Law and as such the Factories Act, LFN 1990 is the Nigerian version of the English Factories Act of 1961 albeit with little modification to fit into our own local circumstances. Essentially, it is an off-shoot of the English common law, most of which are now codified. A thorough understanding of the provisions of section 37(1) of the Act will reveal the following points;

1) The premises must be used for trade or gain in order to qualify as a factory. The phrase trade or gain commutes an intention to make profit. Thus, the kitchen of a manual hospital had been held not to be a factory because the mincing of meat by electrical means carried on in it is not carried on by way of trade or gain.

2) The employer must have access to, or control over the premises if the place is to be a factory.

3) Generally, the person or persons who work in a factory must be employed. Thus it has been held that a prison workshop is not a factory under the definition of factory in the Act since there is no relationship of master and servant or employment for wages. Part II of the Act, which is on general health provisions, imposes on the occupiers of factories duties designed to protect the health of those employed in such places. Particularly, sections 7-12 deal with cleanliness, overcrowding, ventilation, lighting, damage of floors and sanitary conveniences.

The principal provisions of part III of the Act are those dealing with general safety provisions with particular emphasis on the provision for fencing of machinery. Machinery under the Act is divided into three classes;

a) Prime movers see section 14; these are engines, motor and other enhancement which provide mechanical energy derived from steam, water, wind, electricity, the combustion of fuel and other sources.

b) Transmission machinery; see section 15. This consists of every shaft, wheel, drum, pulley, and system of fast and loose pulleys, coupling, clutch, driving-belt or other devices by which the motion of a prime mover is transmitted to or received by any machine or appliances.

c) Other dangerous parts of machinery. The combined effect of the provision of sections 14(1), 15(1) and 17(1) of the Act is that it is obligatory on the occupier of a factory to securely fence these parts of a machinery unless they are in such position or of such construction as to

be safe to every person employed or working on the premises as it would be if it was securely fenced.

SELF ASSESSMENT EXERCISE 1

1. Examine the major purpose of the Factories Act, 1990.
2. Examine generally the provision of section 87(1) of the Factories Act LFN, 1990.

3.2 The Nature of Fencing

The primary purpose of the provision of section 17 of the Act is that it imposes a duty to fence every dangerous part of machinery on the owner of the factory. Unlike prime movers and transmission machinery which are dangerous, and must be securely fenced; the duty to fence any other part of machinery arises only if that part is dangerous. In determining whether a part of machinery is dangerous, the test to be applied is “*foreseeability*”. In other words, a part of a machinery is dangerous if it is a reasonably foreseeable cause of harm.

Section 19 of the Act, which specifically provides for fencing of dangerous machineries provides as follows;

“All fencing or other safeguards provided in pursuance of the foregoing provisions of the Act shall be of substantial construction, and constantly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed for examination and for any lubrication or adjustment shown by such examination to be immediately necessary, and all the conditions specified in section 18(2) of this Act are complied with.”

From the above provision of the Act, machinery means, for purpose of fencing, machinery used in the course of the factory’s processes of production as distinct from machinery which is merely a product of the factory.

The fencing requirement therefore, “*extends to all machinery forming part of the equipment of a factory, whether in a fixed position or capable of moving from place to place, thus they apply to a mobile crane and also vehicles used in a factory...but not visiting vehicles...*”

It is therefore submitted that the duty to fence imposed by the Act is absolute and strict in the sense that it is neither qualified by such words as “*as far as reasonably practicable*” nor does it impose on the occupier a duty to take “*all practicable measures.*” The duty to fence applies irrespective of practicability. An occupier of a factory cannot therefore excuse his failure to securely fence machinery by saying that fencing would make the machinery unusable.

In essence, strict or absolute obligation to fence does not mean that the fence must be so constructed that it cannot be climbed over, or broken down, by an employee who is determined to get out the machinery. That would be demanding the impossible from the employers.

SELF ASSESSMENT EXERCISE 2

What are the essential requirements of section 14, 15, 17 and 19 of the Factories Act, 2004?

4.0 CONCLUSION

The submission made in this unit is not exhaustive and students are advised to embark on further readings to broaden their knowledge of the topic containing the basic and essential requirement which serves as a reference point for the unit.

5.0 SUMMARY

At the end of this unit you should have been able to know the following:

- the importance of fencing of industrial and factory machineries.
- the basis of the entitlement of the Factories Act
- the various element of a civil liability at the suit of an injured employee who seeks redress against the occupier or employer
- the various defences recognized by the law and available to the

employee or owner

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the relevance of fencing an industrial of factory machinery?
2. Explain the basic concept behind the enactment of the Factories Act.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O. (2004). *Nigeria Labour and Employment in Perspective* 2nd Ed, Folio Publishes Ltd, Ikeja, Lagos.

Workmen's Compensation Act, Cap 70 LFN 1990

Trade Dispute Act, Cap 432 LFN 1990

UNIT 2 LIABILITY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Element of Civil Liability
 - 3.2 Proof of Liability
 - 3.3 The Principle of Res ipsa Loquitur
 - 3.4 Foresight
 - 3.5 Duty of Care
 - 3.6 Balancing the Risk Against Precautions
 - 3.7 Attributes of the Employees
 - 3.8 Causation
- 4.0 Conclusion
- 5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

The purpose of this unit is to examine those areas of contract of employment that may result in tortious liability either by the employee solely or on behalf of the employee as distinguished from various liabilities. This examination will be in relation to trade dispute as governed and professed by relevant statute.

2.0 OBJECTIVES

This unit deals with common law torts which a trade union, its officials and members are proved to **have committed** in the case of industrial action.

Secondly, it examines the extent of statutory protection afforded to trade unions and unionist from those torts, in the prosecution of trade dispute.

3.0 MAIN CONTENT

3.1 Elements of Civil Liability

The duty to fence imposed by the Factories Act is a duty of absolute liability. It is therefore not open to the defendant to say that he had done all that was reasonable to prevent or avoid the danger complained about. It should not however be imagined that because of the absolute liability imposed by the Act, every failure to fence automatically results in the employer's liability. Whether the employer's liability is absolute or dependent on reasonable care or foresight, it is quite clear that there is a duty on the employer to keep his machines in proper state of repair and maintenance and to take all reasonable care to maintain his plant and machinery and equipment in such condition as to be safe for those working in the factory.

See. *John Summers & Sons Ltd v Frost* {1955} M.C. 740.

However, before an employer will be held liable for injuries sustained by his employees as a result of unfenced machineries, the following issues hereunder discussed must be established.

3.2 Proof of Liability

It is part of the general principles of law of evidence that he who alleges must prove. In this case, it is the plaintiff (*i.e. the employee in case of an action for breach of duty*) who has the evidential burden of proof. The English House of Lords in *Boyle v Kodak Ltd. (1969) 2 ALL E.R. 437*, it was held that before the plaintiff can be said to have discharged the burden, the following four conditions must be satisfied.

- a) He must show that the Act imposes a duty on the defendant – the factory owner or occupier.
- b) He must satisfy the court that the duty is owed to him or to a class of people to which he *{the plaintiff}* belongs.
- c) He must show that the defendant was in breach of the duty owed to him.
- d) Finally, he must show that in consequence of that breach, he has suffered injury or that the breach has caused him injury.

3.3 The Principle of *Res ipsa loquitur* as a Basis of Liability

While proof usually involves the establishment of acts or omissions which can be regarded as negligence, in certain cases the courts will be prepared to infer from the immediate circumstances of facts leading to the conclusion. *Res ipsa loquitur* is a rule of practice or evidence not a rule of Law. It is to assert the right of party claiming injury and damages due to the negligence of the other party. There must however be evidence of negligence in a reasonable way before the rule, which is a convenient way to explain how an unusual accident can apply. See *Akanmu v Adigun [1993] 7 NWLR (pt.204) 218*. Once ‘*res ipsa loquitur*’ is raised, the defendant can only counter the presumption by positively disproving the case established. Although it is sufficient enough merely for the defendant to explain how the

injury could have occurred without negligence, the presumption can be rebutted other than by positive disproof. The potency of this rule was demonstrated in the case of *Odebumi v Abdullahi* (1997) 2 NWLR (pt 489) 526, an action under the Fatal Accident Act where a trailer tanker ran into a Volkswagen car which was stationary and killed the driver/owner. In view of the strict liability imposed on employees {factory owners and occupiers} by the Factories Act, it would appear that an employee does not really need to raise this presumption nor does he have to rely on the maxim in order to succeed in an action for damages for breach of statutory duty. There is so far a paucity of Nigeria cases in regard to liability under the Factories Act.

In spite of this, one may fairly confidently assume that in view of the languages of the Act and the strict liability imposed on the employee, an employee injured at work will almost certainly get a favourable treatment under the law. As most of the sections of the Act confirm the rules of common law, reference cannot but be made to the provisions and requirements of common law as to liability arising from the duty of care.

3.34 Foresight

The well recognized basis of the test of duty of care laid down in the popular dictum of Lord Atkin in *Donoghue v Stevenson* [1932] A.C. 562 at 580 is still very relevant in this case. The learned lord Justice said; “*You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question*”

The foregoing statement has generally been regarded as the “*Forcibility Test*”. How then can foresight be measured? It is to be measured in the light of knowledge and experience possessed or reasonably expected at the time of the alleged negligence.

3.5 Duty of Care

The duty expected of the employer is that of a reasonable man and a reasonable man does not hold himself out as possessing specialized skills without expecting to be judged by the standards of each representation. The standard of care required is judged by the state of knowledge at the time in question. If the danger is unknown at the time, then it will not be foreseeable.

3.6 Balancing the Risk against Precautions

As earlier noted, many of the statutory provisions of the Factories Act are a confirmation of the common law duties imposed on the employer. A typical example is that, under common law an employer has a duty to take care of the health, safety and welfare of his employees. An identical provision is contained in section 48 of the Factories Act. In essence, an employee may bring his action at common law with the need to prove negligence or lack of care under the provision of the Act.

See: *Western Nigeria Trading Co. Ltd v Busari Ajao* {1965} NMLR 178.

In the same vein, the degree to which care must be taken depends on a balancing of the risk against the precautions necessary to avert it. The risk is measured not only in terms of frequency, but also of seriousness. All the facts of the case are taken into account not least the particular sensibility of the plaintiff. The balancing act is done mainly in regard to the duties imposed by common law. As balancing exercise is often discarded as demonstrated by the various reports of the courts in favour of absolute liability.

3.7 Attributes of the Employee

The law in this respect is that the employer must take the worker as he finds him. What this simply means is that if the employee is susceptible to a particular type of injury to which other employees may not be susceptible, and the employee owing to his peculiar susceptibility to such a risk, the employer will not be excused from the resulting liability simply because of the plaintiff {employee's} peculiar susceptibility. On the other hand, the employer is entitled to rely on the particular employee's staff, experience and knowledge. As regards statutory duties, it may be necessary to give instructions to an experienced man. Experience is not of course general and must relate to the work in hand, although a job may be so straight forward that it is reasonable to leave it to an unskilled man, without instruction.

See section 73 of the Factories Act.

In the law of negligence, the duty to ward off danger depends upon what is considered reasonable, rather than what is practicable. It therefore appears that there is a heavier statutory responsibility placed on the employer in this respect. Whilst the duty of common law depends on what is reasonable, the duty under statute depends on what is practicable and here lies the heavy burden.

3.8 Causation

The general rule in respect of this fact is that the courts must, from all the causes which have led to the injury, establish whether the negligence of the defendant can be said to be the cooperative cause. Industrial injury could be the result of negligence of a number of persons often bound together by contract. In such a case, the injured employee can bring an action against any or all of them, leaving the defendant to seek contribution from his other tortfeasors. In some other cases however, the injured employee may have contributed to his own injury. This is often covered by the doctrine of contributory negligence.

SELF ASSESSMENT EXERCISE 3

Examine the various elements of civil liability in cases of injury sustained by an employee in the factory.

4.0 CONCLUSION

It is pertinent to note that the doctrine of safety and health at work is important and paramount to labour law. The essence of the duty of care is that you owe to yourself what you owe to your neighbour in this instance; your colleague is your neighbour. However, the doctrine of *res ipsa loquitur* that is the fact speaks for itself, is also of paramount importance in the doctrine of duty of care.

5.0 SUMMARY

In this unit, students have been able to know the following:

- 1) The various elements at civil liability at the suit of an injured plaintiff {employee} who seeks redress against the defendant {employer, occupiers or owners of the factory}.
- 2) The duty of care and the Rule in it is important in the Latin maxim of *Res Ipsa loquitur*.

6.0 TUTOR MARKED ASSIGNMENT

- 4) Enumerate and discuss the various element of civil liability in an industrial relation suit.
- 5) Briefly explain the doctrine of *Res ipsa loquitur*.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O., (2004). *Nigerian Labour And Employment Law* (2nd ed.) Lagos.

Factories Act.

UNIT 3 DEFENCES

CONTENTS

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content

3.1 Defences

3.2 Remoteness of Damages

3.3 Volenti Non Fit Injuria

3.4 Contributory Negligence

3.5 Limitation of Actions

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Reading

1.0 INTRODUCTION

The doctrine of defence under protective health and safety is important to the company generally because once there is a negligent act done with no evil intent then the party is able to put forward defences in his favour for purpose of reducing the awarded damages to the aggrieved party in which ever case.

2.0 OBJECTIVE

The main objective in this unit is the doctrine of defence in manner which is related to the award of damages.

3.0 MAIN CONTENT

3.1 Defences

The word defence is paramount to law generally.

3.2 Remoteness of Damage

The question of remoteness of damage is closely allied to the issue of causation. Remoteness of damage is a general defence to all torts. If the employer's default is not proximate or predominant cause of the injury, he will escape liability. This in *Thomas Rerewi v Bisiriyu*

Odegbesan [1976] NMLR 89, the Supreme Court held that a person cannot be held liable for negligence unless the damage is caused by the negligence or as a consequence of it.

3.3 Volenti Non-Fit Injuria

This defence is founded on the principle of voluntary assumption of risk.

The essential features of this defence are;

1. That the plaintiff must have known of the risk or the harm.
2. He must have freely accepted that risk.

If these two essential features are present, then the defendant will be exculpated from liability. An offshoot of this rule presupposes that an employer will not automatically be free of liability merely because a workman continues with his duty with the knowledge of the risk involved. To free the defendant from liability, the plaintiff workman must voluntarily and freely run the risk. See *Smith v Baker [1891] A.C. 235 H.L.* the House of Lords held that the defence of violent; *non fit injuria* could not succeed because, although the plaintiff knew of the risk, he had not freely accepted it.

3.4 Contributory Negligence

This is another defence, which can shield the employer from bearing the whole liability arising from the injury suffered by his workman. At common law, contributory negligence is a complete defence and no question of apportionment of liability arose. The party who had the last opportunity of avoiding the accident bears the whole responsibility; if this was the plaintiff, and then he would lose his claim. When contributory negligence is offered as a defence, all the defendant need to prove is that the plaintiff failed to take reasonable care for his own safety. This is a defence both to negligence and breach of statutory duty, but the duty of proving same is on the defendant. In Nigeria, the defence of contributory negligence is regulated by the following laws;

- I. Civil Liability {Miscellaneous Provisions} Act, 1961.

II. Fatal Accident Act 1961 {Lagos}

III. Section 8 of the Old Western Nigeria Torts Law 1958.

These laws and provisions are similar in content and application to the English Law Reform [Contributory Negligence] Act, 1945 which provides that where the faults of the person injured and another contribute to an injury, the claim shall not be defeated but the damages recoverable shall be reduced to “*such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.*”

In *Alidu Orekoya v University of Ife (1972) HIF/3/72* decided on 18 September, 1972, Thompson J., reduced by 50% damages awarded to a typist who scrambled to take a bus in the university campus with the umbrella in his hand and thereby sustained injury resulting in the deformity in one of his legs. Foreseeability is a relevant factor in this defence and according to Lord Denning in *Jones v Lovox Quarries (1952) 2 Q.B. 608*; “*A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man he might hurt himself; and in his reckoning she must take into account the possibility of others being careless.*” The corpus of this doctrine therefore is that the plaintiff, though in no way contributing to the accident, has by his negligence, contributed to the degree of injury. See *FROOM V BUTCHER (1975) 3 ALL E.R. 520*

3. 5 Limitation of Action

There is an absolute need for a plaintiff to bring his action within the time allowed by law if he does not want to lose his right. Limitation of Action is the principle of law which establishes the rule that a plaintiff must seek his remedy within a time limit stipulated by law after which period his action will become statute barred. The limitation period can be used as a defence to an action in tort and the defendant can plead that the time within which the plaintiff should have brought his action had expired or that the action had become statute

barred. This defence must be specifically pleaded as it may otherwise be deemed to have been waived. There are two basic reasons for evolving the principle of limitation:

1) It is a fact that it will be contrary to public policy for a potential defendant to have the possibility of legal proceedings hanging like a sword of **Damocles** over his head for an indefinite period.

2) Where an action is moderately delayed for several years after the event which gave rise to it has occurred, memories of witnesses might have become hazy and, in some cases, vital witnesses may have died with the result that the truth may get depreciated.

The limitation period starts to run;

I. The date on which the cause of action accrued; or

II. The date of knowledge.

Example of existing limitation laws in Nigeria are;

1. Limitation law of Lagos State {1994} cap 118.

2. Section 2 of the Public Officers Protection Act {POPA} cap 379, LFN, 1990.

Finally, it is apposite to state that any of these defences, if well articulated and pleaded will avail a defendant a good defence.

SELF ASSESSMENT EXERCISE

Examine the various defences available to a defendant in action relating to injuries sustained by a plaintiff {employee} under the Factories Act.

4.0 CONCLUSION

The discussion of defences made in this unit is not exhaustive and students are hereby advised to embark on further reading to broaden their knowledge of the topic. However, it is a good starting point of reference. It contains the basic and essential requirements and as such will serve as a good and veritable pointer.

5.0 SUMMARY

1. The defences recognized by the law and available to the defendant {owner or employer}.
2. The defence of volenti non-fit Injuria.
3. The defence of limitation of action

6.0 TUTOR-MARKED ASSIGNMENT

1. Enumerate and explain the various defences available to a defendant {employer] at the suit of a plaintiff {employee} in a case of injuries sustained in the factory.
2. Explain the doctrine of limitation of action as it relates to the Limitation of action Law of Lagos State.

7.0 REFERENCES/FURTHER READINGS

Ogunniyi O., (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Lagos.

UNIT 4 THE WORKMEN'S COMPENSATION ACT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Who is a Workman?
 - 3.2 Who is an Employer?
 - 3.3 When is a Workman Entitled to Compensation?
 - 3.4 What is Accident?
 - 3.5 Course of Employment
 - 3.6 Categories of Compensation
 - 3.7 Agreement as to Compensation
 - 3.8 Closing Compensation
- 4.0. Conclusion

5.0. Summary

6.0. Tutor Marked Assignment

7.0. References/Further Readings

1.0 INTRODUCTION

The Workmen's Compensation Act, cap 470, laws of the Federation of Nigeria 1990 {hereinafter referred to as the Act} replaced the Workmen's Compensation Act of 1958 which hitherto had been the subject of severe criticism because of its narrowness of scope and irrelevance to modern industrial needs.

2.0 OBJECTIVES

Unlike the Factories Act {already discussed} which was enacted to protect employees and in appropriate cases, other persons working in factories, from occupational accident and diseases, this Act provides for the payment of compensation to the workman for injuries sustained in the course of his employment. This unit is therefore going to show the various conditions under which an employee will be entitled to compensation from an employer. It will also reflect on the other conditions incidental to the promulgation of the Act. By this, the student will learn the operation of the Act.

3.0 MAIN CONTENT

Under the Act, compensation does not depend on the negligence of the employer but on whether the injury or death was caused by an accident arising out of and in the course of the employment of the workman. In essence, the major consideration for the determination of whether or not an employee is entitled to any compensation under the Act is whether the cause of his injury occurred or arose out of and in the course of his employment. The second consideration will be whether he is an employee or not in the employment of the employer. These are the issues for discussion in the main body of this unit.

3.1 Who is a Workman?

Section 1 of the Workmen's Compensation Act provides that'

"A person shall be deemed to be a workman if either before or after the commencement of the Act he has entered into or is working under a contract of service or apprenticeship with an employer whether by way of manual labour, whether the contract is expressed or implied, oral or in writing."

Certain categories are however excluded from the application of the Act by virtue of Section 2 (2) and 3 (2) (a) - (f) of the Act. Therefore, by necessary implication from the definition provided by the Act, a workman now includes practically everybody from cleaner to the Managing Director or the permanent secretary in the civil service, as section 2 (1) of the Act states that it shall apply to a workman employed in the public service of the Federation and of any state thereof; and in the Nigeria Police.

3.2 Who is an Employer?

By the provisions of section 41(1) of the Act an employer includes;

- a. The Government of the federation and of any state in Nigeria,
- b. Anybody of persons corporate or unincorporated and the legal personal representative of a deceased employer.
- c. Where the services of the workman are temporarily lent on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the original or permanent employer would continue to be the employer of the workman while he is temporarily working for that other person.
- d. In relation to persons employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club, shall for purposes of the Act, be deemed to be an employer.

SELF ASSESSMENT EXERCISE 1

Name the categories of people recognized as employers under the Act.

3.3 When is a Workman Entitled to Compensations?

For the purpose of entitlement to compensation under the Act, the workman {or his dependant, in fatal accident cases} must prove, except where the Act otherwise provides, that he has suffered personal injury by accident arising out of and in the course of the employment. See section 3(3) (a) & (b) on many of “*out of and in the course of employment*”

The general rule is that an employer is not liable to pay compensation in respect of any injury which does not incapacitate the workman for a period of at least three consecutive days from earning full wages at the work at which he was engaged. Furthermore, no compensation is payable where the injury is attributable to the serious and wilful misconduct of the workman. Where however an accident results in death or permanent incapacity of the workman, the accident would be deemed to have arisen ‘out of and in the course of his employment, notwithstanding that the workman was at the time of the accident acting in contravention;

- a) Of any statutory or other regulation applicable to his employment; or
- b) Of any orders given by or on behalf of his employer, or
- c) That he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer’s trade or business. The significant effect of the above instances is that misconduct of the workman would not disentitle him from claiming compensation, so long as he misconducts himself in the interest of his employer’s trade or business. The contrary would be the case where death or incapacity was due to a deliberate self-injury. Similarly, no compensation is payable in respect of death or incapacity resulting from personal injury, if the workman has at any time knowingly misrepresented to his employer that he was not suffering or had not previously suffered from that injury or similar one.

SELF ASSESSMENT EXERCISE 2

Under what situation is an employee entitled to compensation?

3.4 What is an Accident?

The liability of an employer to pay compensation depends on the occurrence of an accident in the course of his workman's employment. The word 'accident' is not defined anywhere in the Act. However, the word has been judicially contrived under the repealed Workmen's Compensation Act of England. So, in *Fenton v Thorley* {1903} A.C.443, the House of Lords, in construing the word "accident" under section 1(1) of the Workman's Compensation Act, 1897 [section 1(1) is identical to section 3(1) of the Nigeria Act], held that "accident" should

be given its popular and ordinary meaning. That when so construed, it means any mishap or unflawed event not expected or designed. The law in respect of an accident giving rise to a disease which results to an injury is that the injury would be treated as arising from the accident itself. In *Brintons Ltd v Turvey* {1905} A.C.200, a bacillus passed into the eye of a workman from the wool which he was sorting. He became infected with anthrax of which he died. Lord McNaughton, while explaining the nature of the accident" in the case said; inter alia; "-- -- --It was an accident that this noxious thing escaped.-- -- - It was an accident that the thing struck the man on a delicate and tender spot in the corner of his eye- - -"

SELF ASSESSMENT EXERCISE 3

Describe what an accident is under the Workmen compensation Act

3.5 In the Course and Out of Employment

The general rule is that for an employer to be entitled to the insurance benefit provided for the injury suffered by him or her, he or she must prove that the injury, accident or death arose out of and in the course of employment. This is the position of the provision of section 40 of the Act. In the same vein, section 3(1) of the Act contains the criterion governing the payment

of compensation. The basic fact however is that the injury or death for which compensation is being claimed must have been caused by an accident “*arising out of and in the course of employment*”. It should be noted that this phrase is not defined in the Act.

In the absence of any clear statutory definition, it is possible to draw from case law three considerations which may be relevant in determining whether an accident has arisen out of and in the course of employment, to wit;

- When did the workman employment begin and end?
- Where did the accident occur?
- What was the workman doing at the time of the accident?

In *U.A.C (Nigeria) Ltd v. Joseph Orekyen*, an employee of the company was placed in charge of a petrol station, which the company operated. One Morning, While he was checking the overnight sales in the salesroom of the station, a stranger walked in and asked for change for a one pound note. The stranger was told by one of the petrol attendants that there was no change. The stranger, enraged by the reply, attempted to pick a fight with the attendant. The plaintiff intervened and took a position between them in order to prevent the fight. But the stranger struck the plaintiff in the eye and he lost that eye as a result. The plaintiff successfully claimed compensation from his employers at the magistrate's court. Appeal to the High Court was on the sole ground that the injury did not arise out of and in the course of the workman's employment.

The court dismissed the appeal and held that the act arose out of and in the course of the workman's employment.

The view was different in *Ade Smith v Elder Dempster Lines Ltd* {1944} 17 N. L. R. in *M'Neice v Singer Sewing Machine* [1911] S.C.12, driver overtook a salesman who was cycling in the course of his duty in a public street. His employers were held liable because it was part of the obligations of the workman that placed him within the zone of special danger.

By the foregoing decision, it is clear that it is not enough that the workman was at his place of work and within the duration of the day's employment when the accident occurred. 'It could just be that *"The accident arose because of something being done in the course of my employment or because the Workman was exposed by the nature of my employment to some peculiar risk"*. The accident which befalls the workman must be *"peculiar"* or *"special"*. In this sense, it could only arise out of the nature of his employment, i.e., as a consequence of the plaintiff's employment. At the time of an accident, for a workman to be entitled to compensation, he must be discharging his contractual duties or doing something incidental to his employment. A thing is said to be incidental to employment if it is either causally connected to it or expressly or impliedly permitted by the employer. Summarily, for an accident to arise out of and in the course of employment, the employee must have gone outside the sphere of his employment by either;

- a. Doing a work he was not engaged to do or
- b. Being in a territory in which he has nothing contractually to do.

SELF ASSESSMENT EXERCISE 4

What do you understand by the phrase; *"Arise out of and in course of employment"*?

3.6 Categories of Compensation

The Act makes provisions for four categories of compensation; namely;

I. Compensation in Fatal Accident Cases:

These are the cases where death results from the injury. Section 4 of the Act provides, inter alia, that a sum equal to the deceased workman's forty-two month's earning shall be paid to the dependants.

II. Compensation in the Case of Total Permanent Incapacity:

Incapacity is total and permanent where it completely disables the workman for future employment. Section 5 provides that the amount of compensation payable in such cases shall be fifty-four month's earnings of the workman.

III. Compensation in the Case of Partial incapacity:

This is an incapacity which reduces the workman's pre-accident earning capacity. Section 7 provides inter alia, that the workman shall be entitled to a percentage of his fifty-four month's earnings as specified in the second schedule to the Act, being the percentage of the loss of earning capacity caused by that injury.

IV. Compensation in the Case of Temporary Incapacity:

In the case of temporary incapacity, the workman shall be paid as compensation his basic pay for the first six months of his incapacity. Thereafter, if the incapacity continues, he should be paid half of his basic pay for an additional period of three months, and if the incapacity thereafter still continues, he shall be entitled to a quarter of his monthly salary for a succeeding period of fifteen months. Any such entitlement paid under this head shall be deducted from any sums eventually paid to the workman as compensation. The provision of section 12(1) and (3) of the Act are to the effect that compensation payable under the above categories shall be paid to the court, and any sum so paid shall be paid to the person entitled thereto or be invested or otherwise be dealt with for his benefit in such manner as the court thinks fit. This is subject however, to the provision of section 19 of the Act, which provides that an employer is not entitled to end or diminish any payment which he is bound to pay under the Act.

SELF ASSESSMENT EXERCISE 5

List and explain the various categories of compensation available to an injured employee under the Act.

3.7 Agreement as to Compensation

Within the purview of the labour law, compensation can be described as a monetary payment made to an injured workman in respect of injury, which he has sustained in the course of employment. Such compensation may be as agreed by the employer and the workman or as may be approved by the court. Section 16(1) of the Act provides the situations and conditions by which the employer and the employee may agree in writing as to the compensation to be paid by the employer. These include;

a. That the compensation agreed upon shall not be less than the amount payable under the provisions of the Act.

b. That where the workman is an illiterate, the agreement shall not be binding against him unless;

I. It is endorsed by a certificate of an authorized labour officer to the effect that he read over and explained to the workman the terms thereof {and that they were, in appropriate cases, interpreted to him in a language which he understands} and

II. That the workman appeared fully to understand and;

III. Approved of the agreement.

However, any agreement as to compensation may be cancelled by the court on the application of any for the party to it, if it is proved;

a) That the compensation agreed was not in accordance with the provisions of the Act, or

b) That the agreement was entered into in quince or under a mistake as to the true nature of the injury, or

c) That the agreement was obtained by fraud, undue influence, misrepresentation or other improper means as would in law, be sufficient ground for voiding it.

SELF ASSESSMENT EXERCISE 6

Examine the various vitiating circumstances to an agreement reached under the provisions of section 16(1) of the Act.

3.8 Claiming Compensation

The general position of the law going by the provision of section 13 of the Act is that no proceedings for the recovery of compensation under the act shall be maintainable unless;

- a) Notice of the accident has been given to the employer, by or on behalf of the workman,
- b) The application for compensation with respect to that accident has been made within six months from the occurrence of the accident causing the injury or in the case of death, within six months from the time of the death. The failure to give notice or to make an application within six months would however not be a bar to any proceedings for compensation, if the failure to give notice did not prejudice the employer in his defence or there were reasonable ground for not making an application within six months.

Therefore, once an employer is in receipt of the notice of accident, it is obligatory on him to arrange as soon as reasonably possible to have the workman medically examined free of charge. The examination, under the law, is necessary in order to determine the degree of incapacity suffered and, consequently the liability of the employer. However, in fatal accident cases, the Act imposes an obligation on the dependants of the deceased workman to give to his employer a medical certificate as to the cause of death. In the event of any of the foregoing, an employee has twenty-one days from the receipt of notice to reach an agreement in writing with the injured workman as to the amount payable as compensation. At the expiration of that period, the workman may, in the prescribed manner, make an application for enforcing his claim to compensation to the High Court having jurisdiction in the area in which the accident giving rise to the claim occurred.

SELF ASSESSMENT EXERCISE 7

How is compensation claimed?

4.0 CONCLUSION

Apart from the major provisions of the Workmen's Compensation Act relating to the compensation of an injured employee while in the employment of the employer, the provisions of the old Fatal Accidents Laws of the various states of the country, come to bear on the overall interest of the injured or deceased employee. This is aptly demonstrated in the provision of section 13 of the Act already discussed. By and large, it is hoped that student will now be better informed of the intent and purpose of the Act, particularly in the area of categories of compensation payable, in case of death or injury.

5.0 SUMMARY

Through this unit students have been able to

- 1) Define who a workman is
- 2) Define who an employer is
- 3) How and when an employee is entitled to compensation.
- 4) What act could be regarded as accident
- 5) When an accident arises out of and in the course of employment.
- 6) The various categories of compensation
- 7) When and how agreement as to compensation should be made.
- 8) How a claim for compensation is made
- 9) The nature of Fatal Accidents and
- 10) The meaning of compensation generally.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the relationship between the Factories Act and the Workmen's Compensation Act, if any?

2. What categories of people are not regarded as workman under the Act?
3. Who are those regarded as employer by the Act?
4. Under what conditions will an employer or workman be deprived or denied of his claim for compensation under the Act?
5. When is an act regarded as an accident?
6. Explain the phrase “arisen out of and in the course or employment”.
7. Explain the various heads of compensation available to the families or dependants of a deceased workman or an injured workman.
8. Differentiate between agreement as to compensation and claiming compensation.

7. 0. REFERENCES/FURTHER READINGS

Ogunniyi O., (2004). *Nigerian Labour and Employment Law in Perspective*, 2nd ed., Lagos.

Fatal Accidents Act.

Workmen’s Compensation Act.

UNIT 5 EMPLOYER’S VICARIOUS LIABILITY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Course of Employment
 - 3.2 Employer and Independent Contractor
 - 3.3 Vehicle Owners and Agent Drivers
 - 3.4 Presumption in Road Accident Cases
 - 3.5 The Permanent and the Temporary Employer
- 4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

The doctrine of vicarious liability is one that fixes liability on the employer for the tortious act of the employee committed in the course of employment and causing injury to a third party without any necessary element of fault on the part of the employer.

2.0 OBJECTIVES

The objective of the concept of vicarious liability in relation to labour law is the liability of A to C for the damages caused to C by the negligence or other tort of B. The employer's vicarious liability for the tort of its employee arises out of the employment relationship. In other words without this particular relationship there would be no basis for the employer's vicarious liability. On the basis of the foregoing this unit will focus on such situations that will naturally give rise to the vicarious liability of the employer towards the victims of the acts and omissions of his employee and the exceptions thereto.

3.0 MAIN CONTENT

3.1 The Course of Employment

The basic statement of this doctrine is that the master will be vicariously liable for the tortious act of his servants committed in the course of employment. This phrase "course of employment" is a legal term. The master will not be responsible unless the act complained of was committed in the course of employment. *Denny L.J. In YOUNG v. BOX & CO. LTD (1951) T.L.R. 789 AT 793 said as follows*; "To make a master liable for the conduct of his servant the first question is to see whether the servant is liable. If the answer is yes, the second question is to see whether the employer must shoulder the servant's liability"

However, before the employer will be held liable for the torts committed by his employee, the following conditions must exist;

- (i) The Plaintiff must prove that the tortfeasor is an employee.
- (ii) Since the employee is the principal of the tortfeasor, to make his employer vicariously liable for his tort, the employee must be joined as a co-defendant; otherwise, the vicarious liability of his employer will not arise. The following considerations may however be taken into account in distinguishing an act which is, from one which is not, a test of vicarious liability.

- (a) The scope of employment
- (b) Unauthorized manner of doing something authorized
- (c) Express prohibitions
- (d) Unauthorized delegation
- (e) Implied authority

SELF ASSESSMENT EXERCISE 1

- (1) Explain the concept of course of employment in vicarious liability of employers to victims of employees' acts and omissions
- (2) Examine the various distinguishing factors responsible for the tort of vicarious liability to be fully established.

3.2 Employer and Independent Contractor

The law is that an employer is not liable for the negligence of his independent contractor. However, there are occasions when he will be so liable.

Firstly, the employer's personal duty of care for the safety of his workman is non-delegable. Thus, where an employer chooses to discharge the obligations thereby imposed on him through a third party such as an independent contractor, he, nonetheless, remains fully liable for the negligence of the contractor which results in an injury to his workman.

Secondly, where a statute imposes an obligation on employers e.g. the duty of an employer or occupier of a factory, under the Factories Act to have certain machines securely fenced, liability for non-performance of the obligation is not avoided by delegating its performance to an independent contractor. There are however, certain activities such as setting fire on open bushland, carrying out of construction work on the highway, which the law regards as extra hazardous, and requires from those who engage in them a special standard of care. An employer who employs a contractor to carry out such activities on his behalf will be responsible for any negligence of such a contractor, the only exception is when it stipulates in their contract not only the proper precautions to be taken, but also sees that they are in fact taken.

SELF ASSESSMENT EXERCISE 2

Examine the responsibilities of an employer and an independent contractor in a vicarious liability situation.

3.3 Vehicle Owners and Agent Drivers

The general principle of law in relation to vehicle owners and Agent-Drivers in a vicarious liability situation is that the mere ownership of a vehicle does not itself impose any liability on the owner for the negligence of driving of others whom he permits the use of his vehicle. Under certain circumstances, the law imposes vicarious liability on such an owner for the negligent use of his vehicle, irrespective of the existence of any contract of service between the owner and the driver. Generally, to make the vehicle-owner vicariously liable for the

negligent use of his vehicle, two elements must be proved.

- (a) That the authorized use, expressly or impliedly; and
- (b) That the driving was either wholly or partly in the execution of a task or purpose on the owner's behalf.

It was held in *HIGBID v. R.C. HAMMERT (1932) 49T.L.R. 104*. That the mere fact that a man has the authority of a vehicle owner to drive his vehicle does not suffice to make the owner liable for his negligent driving, otherwise any man who allows another the use of his vehicle stands in peril while the vehicle is being used. As a corollary to this, drivers on unauthorised detour may not take an advantage of the doctrine of vicarious liability.

SELF ASSESSMENT EXERCISE 3

In what circumstances will the owner of a vehicle be held vicariously liable for the wrongs committed by a user of his vehicle?

3.4 Presumption in Road Accident Cases

The general rule of law in relation to this point is that where the facts of the relationship between the owner of a vehicle and the driver are not fully known, proof of ownership will give rise to a presumption that the driver was acting or driving as the owner's agent or employee. However, this presumption is rebuttable where the owner adduces evidence to disprove any connection or relation between him and the driver relevant to the tort of vicarious liability. See *ODEBUNMI v. ABDULLAHI (1997) 2 N.W.L.R. (PT. 489) 526*. *OKEOWO v. SANYAOLU (1986) 2 N.W.L.R. (PT. 23) 471*.

SELF ASSESSMENT EXERCISE 4

What is the basic element in the determination of the liability of owners of vehicle in road accident cases?

3.5 The Permanent Employer and the Temporary Employer

Occasionally, there may be questions as to who of two possible employers is vicariously liable. This difficulty often occurs where one employer (normally referred to as the permanent employer) who employs "A" lends the services of 'A' to another employer, 'B' and "A" commits a tort while in the employment of 'B' to whom his services have been sent.

In resolving this issue, what is considered is, “has the borrower placed himself in such a position that he, instead of the permanent employer, would bear liability?”

In *MERSEY DOCKS AND HABOUR BOARD V COGGINS AND GRIFFITHS LIMITED* (1947) A.C.I, LORD UTHWATT said;

“The workman may remain the employee of his general employer, but at the same time, the result of the arrangement may be that there is vested in the hirer a power of control over the workman’s activities sufficient to attach to the hirer responsibility for the workman’s acts and defaults and to exempt the general employer from that responsibility.”

The above diction of the Learned Lord formed the bedrock of what is today known and referred to as “The Mersey Docks case” which was quoted with approval in the Nigerian case of *ROTIMI v. ADEGUNLE IN.S.C.C.14*

SELF ASSESSMENT EXERCISE 5

What is the distinguishing factor between a permanent employer and a temporary employer?

4.0 CONCLUSION

The concept of vicarious liability in respect of labour law vis-à-vis contract of employment has grown over the years, to the extent that most of the previous cases have been overruled and replaced with more profound authorities. However, the basis of this concept is yet to be eroded by the events of modern times. Like other concepts of law, this principle continues to grow through judicial activism and as a result of the overwhelming influx of exceptions.

5.0 SUMMARY

In this unit, we have learnt the following

- (1) The meaning of the concept of vicarious liability
- (2) The object of and aims of the proponents of this legal concept.
- (3) The various grounds upon which an employer will be vicariously liable for the acts and omissions of his employee.

(4) The various exceptions to this principle.

6.0 TUTOR-MARKED ASSIGNMENT

(1) Examine the concept of vicarious liability, in respect of labour law and particularly contract of employment

(2) Examine the various heads under which a master will be held vicariously liable for the torts or defaults of his employee alongside the probable exceptions.

7.0 REFERENCES/FURTHER READINGS

OGUNNIYI O., (2004). *Nigeria Labour and Employment Law in perspective*, 2nd ed., Lagos.

The Workman's Compensation Act, Cap 470 LFN 1990.

Wages Boards and Industrial Councils Act, Cap 466 LFN 1990.

Trade Disputes Act, Cap. 432 LFN 1990.

Trade Unions Act, Cap 437 LFN 1990.

Winfield and Jolowics on Torts (1984).

Munkman, Employer's Liability (9th Ed).

MODULE 4 AGENCIES.

Unit 1 I.A.P

Unit 2 N.I.C

Unit 3 Industrial Training Fund.

UNIT 1 I.A.P: Industrial Attachment Program.

CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Procedure

3.2 SIWES

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

An Industrial Attachment is a structured, credit-bearing work experience in a professional work setting during which the student applies and acquires knowledge and skills. The student is expected to apply learned skills in an organization related to the student's major field of study.

The purpose is to enable the student to examine the values of the organization involved in the experience, and to assess the student's education as it relates to the Industrial Attachment.

Benefits of Industrial Attachment Program include:

Exploring career interests, Skill Acquisition, Work Experience, and Development of Professional Network.

2.0 OBJECTIVES

In this unit we will explain the I.A.P, examine its relevance and its advantages. Students are expected to familiarise themselves with the information herein.

3.0 MAIN CONTENT

3.1 Procedure: At the end of their 3rd year of undergraduate study, students are expected to participate in and complete a minimum requirement of 8 weeks at one service site. They must:

- Collect an Introduction Letter from their Faculty attachments coordinator.
- Fill in the both sides of the Details Form and present it to the Faculty attachments coordinator prior to commencing their attachment using the available channels indicated.
- Familiarise themselves with Report Guidelines
- Present the Attachment Report to the Faculty attachments coordinator 2 weeks into their 4th year course work.

Students who have just completed their 2nd year are encouraged to participate for their benefit, however, this will not count towards their Industrial Attachment to be undertaken at the end of their 3rd year.

Maintaining the academic nature of the Industrial Attachment is essential because academic credit is awarded for the experience (i.e. volunteering and work-for-pay, although worthwhile experiences may not be academically sound). Industrial Attachments may be *paid* or *unpaid*.

3.2 SIWES: In most public organisations, the program is run under a department or unit called the Student Industrial Work Experience Scheme (**SIWES**).

SIWES was established by **ITF** in 1973 to solve the problem of lack of adequate practical skills preparatory for employment in industries by Nigerian graduates of tertiary institutions.

The Scheme exposes students to industry based skills necessary for a smooth transition from the classroom to the world of work. It affords students of tertiary institutions the opportunity

of being familiarized and exposed to the needed experience in handling machinery and equipment which are usually not available in the educational institutions.

Participation in **SIWES** has become a necessary pre-condition for the award of Diploma and Degree certificates in specific disciplines in most institutions of higher learning in the country, in accordance with the education policy of government.

Operators - The ITF, the coordinating agencies (NUC, NCCE, NBTE), employers of labour and the institutions. It is funded by The Federal Government of Nigeria and run for a duration of four months for Polytechnics and Colleges of Education, and Six months for the Universities. Its beneficiaries include:

1. Undergraduate students of the following: Agriculture, Engineering, Technology, Environmental, Science, Education, Medical Science and Pure and Applied Sciences.

SELF ASSESSMENT EXERCISE 1

1. Explain the meaning of the I.A.P and describe its benefits if any. In most public organisations, the program is run under a department or unit called

4.0 CONCLUSION

The submission made in this unit is not exhaustive and students are advised to embark on further readings to broaden their knowledge of the topic.

5.0 SUMMARY

At the end of this unit you should know what the I.A.P is, its basic requirement and procedure and its beneficiaries.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the relevance the I.A.P to management of labour relations.

7.0 REFERENCES/FURTHER READINGS

SWIES operational guidelines.

UNIT 2 NATIONAL INDUSTRIAL COURT (N.I.C)

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Enactment
 - 3.2 Powers
 - 3.3 Operation of N.I.C
 - 3.4 Courts with similar jurisdiction
 - 3.5 Other means of resolving Labour Industry Disputes.
 - 3.6 N.I.C A.D.R centre
 - 3.7 Referring decisions from ADR centre to Court
 - 3.8 Appeals from N.I.C.
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The court has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith. The court also has exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law

relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws. Appeals also lie from the Court to the Court of Appeal as contained in Chapter IV of the constitution of the Federal Republic of Nigeria, 1999. The National Industrial Court consists of the President of the Court and not less than twelve Judges. Presently the National Industrial Court is manned by the President and nine other Judges.

2.0 OBJECTIVES

This unit deals with the National Industrial Court, its enactment, composition and authority. It also deals with matters under its purview and the scope of its authority.

3.0 MAIN CONTENT

3.1 Enactment: Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

1. Notwithstanding the provisions of Section 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-
2. Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith;
3. Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

4. Relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matter connected therewith or related thereto;
5. Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine;
6. Relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising there from;
7. Relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
8. Relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace;
9. Relating to, connected with or pertaining to the application or interpretation of international labour standard;
10. Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
11. Relating to the determination of any question as to the interpretation and application of any-

(i) collective agreement;

(ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;

(iii) award or judgment of the court;

- (iv) term of settlement of any trade dispute;
- (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
- (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;
- (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;

1. Relating to or connected with trade disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;

2. Relating to-

(i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

(ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and

(iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

(m) relating to or connected with the registration of collective agreements.

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified

relating to labour, employment, workplace, industrial relations or matters connected therewith.

(3) The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters on which jurisdictions are conferred on the Court by this Constitution or any other Act or Law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

(4) The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.

(5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or by any other Law.

(6) Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in

sub-section 5 of this section to the Court of Appeal.

(ii) Section 254D- (1) provides further thus:

For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.

Sub-section (2) of section 254D provides:

Notwithstanding sub-section (1) of this section, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the court to be more effective in exercising its jurisdiction”.

3.2: Powers of the National Industrial Court of Nigeria:The 1999 Constitution Third Alteration Act, 2011 confers on the National Industrial Court all powers of a High Court. The Court is empowered-

- To confirm a judgment, an award or order made by the Court, tribunal or body mentioned in the matter before it;
- To vary a judgment, an award or order made by the Court, tribunal or body mentioned therein;
- To set aside a judgment, an award or order made by the Court , tribunal or body mentioned therein;
- To order a rehearing and determination on such terms as it thinks just;
- To order judgment to be entered for any party;
- To make a final order or other order on such terms as it may think fit to ensure the determination on the merits of the matter in dispute between the parties;

Powers.

- To make an order of mandamus requiring any act to be done
- To make an order of prohibition prohibiting any proceedings cause or matter; and
- To make an order of certiorari removing any proceedings, cause or matter into the Court for any purpose.
- To grant urgent interim reliefs;
- To make a declaratory order;
- To appoint a public trustee for the management of the affairs and finances of a trade union or employees’ organization involved in any organizational disputes;

- To make appropriate order for an award of compensation or damages in any circumstance contemplated by the NICA, 2006 or any Act of the National Assembly dealing with any matter that the Court has jurisdiction to hear ; and
- To make an order of compliance with any provision of any Act of the National Assembly dealing with any matter that the Court has jurisdiction to hear.

3.3: Operations of the National Industrial Court: The Court combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialised courts. The Judges of the Court have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. In all civil matters the Court is bound by the Evidence Act. In exercising its criminal jurisdiction, the Court applies the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and Evidence Act in the determination of criminal matters brought before it. Procedure before the Court is regulated by the Constitution of the Federal Republic of Nigeria 1999 (as amended) National Industrial Court Act, 2006 and the National Industrial Court Rules, 2007, the Trades Disputes Act, 1990 (as Amended)

3.4 Courts with Similar Jurisdictions: There are similar Industrial/Labour Courts in other jurisdictions such as Trinidad and Tobago, Ghana, Tanzania, India, Ireland, South Africa and other countries.

3.5: Other means for resolving labour industrial relations matters outside the Court: There are other means of resolving labour, employment and industrial relations disputes. These include dialogue, arbitration, mediation and conciliation. The Court encourages parties to exhaust reasonable avenues to resolve their disputes before they recourse to litigation. The Court recognises the importance of tribunal, arbitration, mediation and conciliation. When parties are not satisfied with the decisions from these organs, they can then appeal the decision or bring it on as original application.

3.6: National Industrial Court Alternative Dispute Resolution Centre: The 1999 Constitution Third Alteration Act, 2011 provides for the establishment of an Alternative Dispute Resolution Centre within the premises of the Court. The Centre offers varied alternative means of disputes resolution on matters which jurisdiction is conferred on the Court.

3.7 Referring Decision of Alternative Dispute Resolution Centre to Court.

By the operation of law, the Court has jurisdiction over ANY civil and criminal dispute on matters which jurisdiction is conferred on the Court. As such any dispute could be referred to or filed with the Court irrespective of the previous attempts at resolution.

3.8 Appeals from the National Industrial Court of Nigeria Section 243(2) and (3) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

1. An Appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.
2. An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly:

Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such Appeal shall be with the leave of the Court of Appeal.

1. Without prejudice to the provisions of Section 254C (5) of this Act, the decision of the Court of Appeal in respect of any Appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

3.9: Powers of the National Industrial Court of Nigeria

Section 254D of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

1. For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.
2. Notwithstanding subsection (1) of this section, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court to be more effective in exercising its jurisdiction.

4.0 CONCLUSION

It is pertinent to familiarise oneself with the provisions above. This notes are in no way exhaustive and student should familiarise themselves with the details and procedures herein.

5.0 SUMMARY

In this unit, students have been able to know the provisions of the N.I.C and its relevance in practise to Nigerian labour relationship management.

6.0 TUTOR MARKED ASSIGNMENT

How have the N.I.C helped in dispatching labour matters.

7.0 REFERENCES/FURTHER READINGS

Federal Republic Nigeria, 1999 Constitution.

UNIT 3 Industrial Training Fund

CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Establishment of the Act and its purpose

3.2 Amendment to the Act

3.3 Variation of the rate of contribution and other variations

3.4 Penalty

4.0. Conclusion

5.0. Summary

6.0. Tutor Marked Assignment

7.0. References/Further Readings

1.0 INTRODUCTION

The Industrial Training Fund (ITF) was established in 1971 by decree 47 of 1971 and amended by the Industrial Training Fund Act 2011. It is managed under a council and has its presence in all the states of the Federation. Its headquarters are located in Jos, Plateau state and corporate headquarters in the Federal Capital Territory, Abuja.

It was set up to encourage the acquisition of skills in industry or commerce in Nigeria with a view to generating a pool of indigenous trained manpower sufficient to meet the needs of the economy.

2.0 OBJECTIVES

This unit will educate the student about the ITF, its enactment and application the benefits and challenges thereof and its implementation.

3.0 MAIN CONTENT

3.1 Establishment of the Act and its purpose: The Council established under the Act is required to provide or secure the provision of training for persons employed or intending to be employed in industry or commerce in Nigeria as may be required periodically; approve such courses and facilities provided by other persons; consider the employment in industry or commerce as appears to require special consideration and publish recommendations in respect of trainings to be undertaken. The Council is required to conduct research and/or assist others to do so in matters of employment doing in industry or commerce.

Under the Act, employers are required to provide adequate training for indigenous staff to improve their job skills. Organisations are mandated to forward the evidence of the above training to the ITF for refunds.

3.2 Amendment to the Act: The Act was amended in 2011 by the Industrial Training Fund (Amendment) Act 2011 was signed by the president on 3 June 2011 and gazetted on 22 June 2011.

The following important amendments were made:

1. The ITF is now empowered to appoint agents to assist in the performance its functions.
2. The Minimum threshold for an employer to be liable for contribution under the Act is now 5 employees rather than 25 or a turnover of N50m (Fifty million naira) and above per annum.
3. Organisations are required to contribute 1% of payroll.
4. "Payroll" has been defined to mean the sum total of all basic pay allowances and other entitlements payable within and outside Nigeria to any employee in an establishment, public or private.

5. “Employees” means all persons whether or not they are Nigerians employed in any establishment in return for salary, wages or other consideration, and whether employed fulltime or part-time and includes temporary employees who work for periods of not less than thirty days (previously 3 months in a year).

Organisations bidding or soliciting businesses from government and private entities are now required to show evidence of compliance with their statutory obligations with respect to payment of training contribution to the Fund.

All regulatory agencies of the Federal Government are required to ensure compliance with this provision.

Entities in the free trade zone requiring approval for expatriate quota and/or utilizing custom services in matters of export and import are to show proof of compliance with the Act

3.3 Variation of the rate of contribution is now to be by order published in the Gazette by the Minister of Industry with the approval of the Federal Executive Council. Previously the Minister, with the approval of the President by order was free to publish in the Federal gazette, vary the rate of contribution

The maximum refund which employers can claim has been reduced from 60% to 50% of the amount paid in respect of the training programme of the employer being in accordance with the Fund’s reimbursement schemes.

3.4 Penalty for failure by an employer to provide adequate (documented) training for its indigenous staff or to accept students for industrial attachment purposes or for providing false

returns or information is in the case of a body corporate a fine of N500,000 (previously N5,000) for the first breach and N1,000,000 (previously N10,000) for each subsequent breach. In the case of the Chief Executive, Secretary or other principal officer of the company to a fine of N50,000 (previously N1,000) or two years imprisonment for a first breach and two years imprisonment without option of fine for each subsequent breach.

The power to waive penalty in whole or in part is now vested in the Director General of the Fund (previously the Council).

Action for recovery of contributions under the Act may now be instituted by agents of the Fund on behalf of the Director General. Contributions for this purpose include underpayment and any interest or penalty payable for late payment.

Any question or dispute relating to liability of an employer to pay contribution under the Act is to be determined by the court (previously by the Minister of Industry).

SELF ASSESSMENT EXERCISE

Describe what you perceive as the benefits of the amendment of the ITFA 2011.

4.0 CONCLUSION

The submission made in this unit is not exhaustive and students are advised to embark on further readings to broaden their knowledge of the topic containing the basic and essential requirement which serves as a reference point for the unit.

5.0 SUMMARY

At the end of this unit you should have been familiar with the provisions of the Industrial Training Fund and the current changes thereto.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the legal the Industrial Training Fund in the management of labour relations?

7.0 REFERENCES/FURTHER READINGS

1. Industrial Training Fund Act 1971 as amended by the Industrial Training Fund Act 2011.

2. Decree 47 of 1971.

Well Done! You have crossed the finished line remember to read over, reference, cross reference and acquaint yourself with the position in recent judgements and enactments.