NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE:LAW 232

COURSE TITLE:LABOUR LAW 11

COURSE GUIDE

LAW 232
LABOUR LAW II

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CONTENTS **PAGE**

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 guide labour law activities in Nigeria is the Labour Act Cap 198, Laws of the Federation of Nigeria, 1990, while others such as the Trade Disputes Act, the Workmen's Compensation Act, Trade Unions Act, The Factories Act complements it.

This course deals with 14 basic points typically relevant and found in Commonwealth Jurisdictions most of which gained independence from Britain, our colonial master. These topics, broken down into units generally bother on employee/employers relationship in Nigeria and they may influence its form and content. They, most importantly, touch upon the underlying valves and feature which concern the way by which labour law is put into use in a democratic and law governed society.

Course Aim

The primary aim of this course is to familiarize you with the subject matter which is dealt with herein and which you are expected to know much about at the end of your reading through.

Course Objectives

The major objectives of this course, as designed, are for the student to be able to know the following at the end of the course:

(i) All the relevant enactments and legislations in relation to labour law in Nigeria;
(ii) Determine a valid contract of employment devoid of any impediments and evil.
(iii) Determine who an employee is by the nature of their employment.
(iv) Discern the differences in the various terms in an employment contract.
(v) Know the corresponding duties and obligation of the parties in a contract of employment.
(vi) Determine when actually an employer will be held liable for the acts and omissions of their employee.

(vii) Know what it entails to validly terminate the employment of an employee.
(viii) Know the remedies available to a wrongfully dismissed employee.
(ix) Know whether or not an employee can enforce an agreement between his union and the union of his employee on his employer.
(x) Know the basic operational structures of a trade union.
(xi) Know the consequences and advantages in embarking on an industrial action. E.g. strike, picketing and lock-out.
(xii) Differentiate between Tortuous Liability and Trade Dispute.
(xii) Know ways and manners in which disputes arising from employment and trade union activities are settled.
(xiv) Know the basic ingredients and operational effect of the Factories Act.
(xv) Know the implication of the Workmen's Compensation Act on the contract of employment, particularly on an employee.

Working through this Course

To complete this course, you are advised to read the study units, read recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercise, and at points in the course you are 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 need to 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. Course guide
2. Study units
3. Textbooks
4. Assignment File
5. Presentation schedule

Study Units

We deal with this course in 14 study units divided into 3 Modules as follows:

Module 1

Unit 1 Collective Bargaining
Unit 2 Trade Unions
Unit 3 Industrial Actions
Unit 4 Employer's Vicarious Liability

Module 2

Unit 1 Unlawful Dismissal
Unit 2 Tortuous Liability
Unit 3 Trade Dispute
Unit 4 Settlement of Trade Dispute
Unit 5 Conciliation and Arbitration

Module 3

Unit 1 Protecting Health & Safety
Unit 2 Liability
Unit 3 Defences
Unit 4 Workmen's Compensation Act

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

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.

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 and the *Assignment file.* The work that you submit to your tutor for assessment will count 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 together with a (Tutor Marked Assignment) form, to your tutor. 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 your self assessment exercises and tutor marked assignments before the examination.

Course Score Distribution

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

Assessment	**Marks**
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four count at 30% of course marks
Final examination	70% of overall course score
Total	100% of course score

Course Overview and Presentation Schedule

Unit	**Title of Work**	**Weeks Activity**	**Assessment (End of Unit)**
	Course Guide	1	
Module 1			
1	History and Sources of Collective Bargaining	1	Assignment 1
2	What is a Trade Union?	1	Assignment 2
3	Explain the term	1	Assignment

	Industrial action		3
4	Employer And Employee - Duties and Obligations	1	Assignment 4
	Module 2		
1	Employer's Vicarious Liability	1	Assignment 5
2	Termination of Contract of Employment	1	Assignment 6
3	Remedies for Wrongful Dismissal	1	Assignment 7
4	Collective Bargaining	1	Assignment 8
	Module 3		
1	Trade Unions	1	Assignment 9
2	Industrial Actions	1	Assignment 10
3	Tortuous Liability and Trade Disputes	1	Assignment 11
4	Settlement of Trade Disputes	1	Assignment 12
5	Protecting Health And Safety	1	Assignment 13
6	The Workmen's Compensation Act	1	Assignment 14
	Revision	1	
	Examination	1	
	Total	17	

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 interspersed 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 in support 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 mark and comment on your assignments, keep a close watch on your progress, and on any difficulties you might encounter and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned 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 fourteen basic points typically relevant and found in Commonwealth Jurisdictions most of which gained independence from the Britain, our colonial master. These topics, broken down into units generally bother on employee/employers relationship in Nigeria and they may influence its form and content.

We wish you success with the course and hope that you will find it both interesting and useful.

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CONTENTS PAGE

MODULE 1

UNIT 1 COLLECTIVE BARGAINING

CONTENTS

1.0 INTRODUCTION

Collective bargaining may be defined as the process of working out a *modus operandi* between two parties - employer and trade union organizations in matters relating to both parties. It may also be seen as the process of making rules, which will govern employment.

Uvieghara however notes that collective bargaining cannot solve all problems. The basic aim is to encourage negotiation and eventual enforcement among parties.

2.0 OBJECTIVES

The purpose of this unit is to show the importance of agreements in any employer-employee relationship and by extension, the trade unions to which the employee belongs. Collective bargaining is not the only means of regulating labour relations. There are three other principal methods of regulating labour relations that have been identified by labour law scholars over the years. These are:

- Unilateral Union regulation
- Statutory Regulation
- Collective Bargaining – Agreement.

The other method, which can be used, is also Consultation. There are procedures by which recognition for bargaining purposes can be enforced. These are the bargaining unit and the sole bargaining agent.

The above issues shall form the basis of this unit and are aimed at sensitising and educating the students on the need for a very strong and virile bargaining power on the part of employee representatives.

3.0 MAIN CONTENT

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.

It has also been defined as those arrangements under which wages and other conditions of employments are settled by negotiations and agreement between an employer, association of employers and employee organizations.

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.

3.1 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 employee

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, Eveleish, 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.I] 35

SELF ASSESSMENT EXERCISE 1

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

3.2 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.

3.3 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.

3.4 Legal Status of Collective Agreement

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 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 has 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,* were 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?

3.5 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 bindingness and enforceability of agreement between two trade unions arises is that of intention of the parties and the statute books.

3.6Collective 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 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 discussion offered so far.

5.0 SUMMARY

This unit has dealt with the following points:

1. The required elements to the recognition of an agreement
2. The procedural effects of an agreement
3. The recognized parties to a collective agreement
4. The legal Status of collective agreement
5. The impact of status on the enforcement of collective agreement
6. 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 Bargaining
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 1999 Constitution of the Federal Republic of Nigeria.

UNIT 2 TRADE UNIONS

CONTENTS

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

3.2 What are Trade Unions?

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 registrable 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 employee, 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 courts, 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.

3.3 Formation and Registration of Trade Unions

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 RAKWAY 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 right and adorations of a registered trade union, a refusal to call it a *"legal entity"* may be the result of a mere dislike of a terminology.

SELF ASSESSMENT EXERCISE 2

3.4 Union Membership and Office

See – Sec. 37&40 of the 1999 constitution of Nigerian
See. *OSAWE v. REGISTRAR OF TRADE UNION {1985} I.N.W.L.R. {PT.4}755.*

3.5 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 ay 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 it 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 3

What is the significance of the Union Rule Book?

3.6 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 4

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

3.7 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 a 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 5

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

3.9 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 while in post-entry closed shop. 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.

3.9 Exhaustion of Internal Remedies

Usually, the rules of the union may expressly provide that a *"member cannot se t he union until he has exhausted all internal remedies provided by the rules".* This provision, it available, usually has it the action of 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 7

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

3.10 Re-organisation of Trade Unions

See the following enactments.

1) Time Union Ordinance of 1938.
2) Trade Union {Amendment} Ordinance caps 200 of1958.
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. 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.
4. Legal status of Trade Union.
5. Legal position of Union membership and the office.
6. Purpose and significance of the Union Rule Book.
7. Legal requirements for the suspension and expulsion of members of a trade union.
8. Union Membership and the rule in *FOSS v. HARBOTTLE.*
9. Union membership and the concept of the closed shop.
10. General rule and exceptions in Trade Unionism.

11. 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 INDUSTRIAL ACTIONS

CONTENTS

1.0 INTRODUCTION

"Industrial action" is described as a deliberate and concerted withdrawal of labour. The term is wider than the concept of strike. This point to the fact that workers may protest, and in fact do protest or seek to pursue their claims or alleged right or entitlements in ways other than by a concerted stoppage of work.

It is also a form used to represent the whole body of actions which employees may take in order to exert pressure on the employer so as to persuade or compel him to accede to their demands or claims.

Although a strike action is the major form of industrial action, there are, however, other forms short of strike. Employees, rather than strike, may decide to work-to- rule or go –slow, *'sit-in'* by being at work and doing nothing, par overtime, *'work-to – contract'* by withdrawing their usual enthusiasm and co-operation or, boycott the employer's products.

2.0 OBJECTIVES

This unit will discuss industrial action and discuss the various means by which the employees, either by themselves or through their union's drive home their points in terms of demands from their employer.

We shall also look into the causes and effect of industrial action on the economy and the advantages or otherwise attributable to this concept.

3.0 MAIN CONTENT

It is important to note that in embarking on industrial action short of 'strike', employees may be liable for breach of their contract of employment. This however depends on the express and implied terms of the contract.

3.1 'Strike' and the Contract of Employment

'Strike' is the best known form of industrial action. It can be defined as the cessation of work by a body of persons employed, acting in combination or a concerted refusal to work for an employer in consequence of a dispute done as a means of compelling their employer or any person or body of persons employed.

Although it is a fundamental rule of Labour Law that, provided a worker gives the necessary notices and complies with the established procedure, he can withdraw his service and temporarily proceed on strike' in order to bring its grievances to the employer after all negotiation strategy has failed.

It appears that strike may be the only instrument left in the hands of employees to compel a recalcitrant employer to comply with the terms of a collective agreement or to collectively bargain with their union or representatives. Thus, it has been observed that the "*threat or actuality of a strike by the union represents the economic and social power that often causes the company to reverse its wages to a point where they are acceptable to the union".*

Whatever may be the actual and potential benefits of a strike from the perspective of the employee, there are statutory and common law inhibitions on the right or freedom to strike. *See Section 42(1) of the Trade Disputes Act, cap 432, LFN, 1990.*

Strikes generally constitute a breach of the contract of employment. At common law, a strike may not only be in breach of the contract of employment of the strike, entitling their employer to summarily dismiss them, but may also fly in the face of certain facts. The controversial issue is whether a worker has the right to strike? This was one of the issues in the leading case of Crofter Harris Tweed Co. Ltd v. Veitch, (1942) 1 All ER 142 where Lord Wright said that '*'the right of workmen to strike is the essential element in the principle of collective bargaining and also a necessary sanction for enforcing agreed rules."*

Essentially, employees cannot call 'strike' without issuing a strike notice on the employers; else the employer will exercise his right to summarily dismiss the employees that being right he has under the contract of

employment.

Where the strike notice is shorter than the contractual notice, the employer can either treat such a notice as anticipatory breach by the employees of their contracts of employment or wait for the threatened strike to take place.

The notion of a strike notice merely suspends the contract of employment. Thus is a novel idea and it has its attendant problems as follows;

1. Who decides when to lift the suspension?
2. Can the employer order the striking employees to return to work?
3. Would the striking employees be free to take up other employments during the period of suspension?

SELF ASSESSMENT EXERCISE 1

1) Examine the effect of strike on the contract of employment.
2) Discuss the effect of non-issuance of strike notice on the contract of employment.

3.2 Picketing

This is another method, which an employee can use to bring pressure on the employer. It is defined as the physical means employed by employees either to intensify the economic pressure meted on the employer in the hope of achieving the desired goals or to ensure that the concerted stoppage of work is not undermined.

The right to picket is closely knitted with such issues as the freedom of assembly and expression, the right to privacy, the rights of individuals to the highway and the duty of the state to maintain law and order. See *generally chapter 4 of the 1999 constitution of the Federal Republic of Nigeria.* The law regulating picketing is contained in *section 42 of the Trade Union Act, 1990.*

One of the major reasons why strikers picket is to solicit public attention and support for their cause. In some cases where some workers may not join in the strike, or substitute labour may be recruited to break the strike.

SELF ASSESSMENT EXERCISE 2

1. What do you understand by the term 'picketing' and what is the purpose of picketing?
2. What is the effect of *section 42 of the Trade Union Act; cap 437 LFN 1990* in respect of picketing?

3.3 Lock – Out

A lock – out is the converse of a strike. It is the right of the employer to lock his employees out of his business premise, in order to compel them to accept his terms and conditions of employment. This is a product of the statute as provided by section 47 (1) of the *Trade Disputes Act, cap 432, LFN 1990 as follows;*

"……the closing of a place of employment, or the suspension of work or the refusal of an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work".

As in the case of strike action by employees the exercise of the option of Lock – Out by the employer is not automatic as he is required to issue Lock – Out notice to the employers, affected employees without which he will be liable for deprivation of work as contained in the contract of employment. He does this in a situation where all negotiation strategy has failed and the employees have embarked on all means of compelling the employer and good result is not forth coming. It is after all these that the employer can engage in a lock out.

SELF ASSESSMENT EXERCISE 3

Compare and contrast strike and Lock – Out in relation to the Trade Disputes Act.

4.0 CONCLUSION

There are various options of industrial actions available to all aggrieved parties but the purpose is to achieve an aim to that is beneficial to both the employee and the employer.

The means available to any of them in a contract of employment are strike action, picketing and lock-out these have been discussed in the most simplified way available. It would be noticed that only the third option, lock – out is in favour of the employer. This is indicative of the fact that the whole process of our labour law is in favour of the employee.

5.0 SUMMARY

This unit has exposed the intricacies of industrial actions to the student through the discussion of the following;

6. The legal meaning and implication of strike action as an alternative to drive how the employees demand.
7. The legal effect of the issuance of strike notice by the employee on the employers.
8. The significance of picketing.
9. The effect of lockout option as available to the employees.
10. The various applicable statutes relevant to trade disputes.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the option of strike as available to the employee in a trade or industrial dispute.
2. What is the significant effect of non issuance of strike notice by the employee on the employer on the contract of employment.
3. Compare and contrast the common law and statutory positions on the issue of strike in an industrial action situation.
4. Discuss the term ‘picketing’.
5. Explain the statutory effect of lock- out.

7.0 REFERENCES/FURTHER READINGS

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

UNIT 4 EMPLOYER'S VICARIOUS LIABILITY

CONTENTS

1.0 INTRODUCTION

The doctrine of vicarious liability is one that fixes liability on the employer for the tortuous 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 tortuous 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 be 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 bush land, carrying out of construction work on the highway, which the law regards as extra harzadous, and requires from those who engage in them a special standard of care.

An employer who employees 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 principal 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's 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 negligence 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 GRIFFTHS 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 1 N.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 2

UNIT 1 UNLAWFUL DISMISSAL

CONTENTS

1.0 INTRODUCTION

The purpose of this unit is to expose the various means by which a contract of employment can be determined. It will also encompass the solutions to unlawful termination of such contracts.

2.0 OBJECTIVES

The Nigeria Labour Law is fashioned after that of the United Kingdom and as such most of the principles in our Labour Law are derived from the Common Law, doctrines of equity and statutes of general application in force in England as at 1st January, 1900.

The object of this unit is to examine those various means by which employers of labour both under common law and equity have determined the contract of employment of their employees over the years.

3.0 MAIN CONTENT

Termination or dismissal is the bringing to an end of the employment relationship. Since a contract of employment is like any other commercial contract, in determining whether a cessation of employment has occurred, one has to look into the contract from which the relationship emanates.

The three possible types of contracts of employment are;

(1) Contract determinable by notice
(2) Contracts for a fixed term
(3) Contracts which expire by performance or on the happening of a specified event.

3.1. Methods of Termination

There are several ways by which a contract of employment may be determined. These includes

(A) By the Agreement of the Parties, namely;

(i) By notice or payment in lieu of notice
(ii) By expiry of time
(iii) By subsequent agreement
(iv) By contractually stipulated causes
(v) By the expiry of a general hiring

(B) By Statutorily Prescribed Procedure

The general rule since the decision of the Nigerian Supreme Court in *SHITTA BAY v. F.P.S.C. (1981) N.S.C.C. VOL. 12, 19,* is that when a statute, or a subsidiary instrument, provides the procedure to be followed in the determination of contracts of employment, a statutory body must comply with it where the procedure applies. Otherwise, the termination will be declared null and void, as being *ultra vires* the body.

(C) By Frustration

A contract is determined by frustration when the law accepts certain circumstances as terminating the contract, irrespective of the intention of the parties. In other words, the contract is determined by the operation of the law.

The doctrine of frustration, within the context of employment contracts, deals with situations where a supervening external event, not produced

by the fault of either the employer or employee, destroys the ability of either the employer to continue to employ, or of the employee to continue to work, under the contract. Events like death, war, natural disaster could actuate the frustration of a contract. The legal effect of frustration is that it releases the parties from further obligations under the frustrated contract.

However, on the other hand, the determination of the fact of whether or not the employer – employee relationship has come to an end by frustration due to the employer's sickness or capacity depends on the following factors:

(i) The terms of the contract, especially its duration and provision for sick – pay.
(ii) The nature of the employee's work.
(iii) The nature of the employee's sickness or injury
(iv) The period of past-employment.

The position of the law is that the death of the employer, where the employer runs a one-man enterprise, like the death of the employee, will terminate the contract of employment by frustration.

SELF ASSESSMENT EXERCISE 1

(1) What do you understand by the term "termination of contracts of employment"?
(2) Highlight and discuss the several methods of termination of contract of employment.

3.2 SUMMARY DISMISSAL

Generally, summary dismissal is the right of an employer to dismiss an employee who has committed a repudiatory breach of the employment contract. In other words, the contract was terminated by the repudiator's misconduct of the employee, which the employer has accepted as annulling the employment relationship.

Therefore, an employee who has committed a sufficiently fundamental breach of his contract can be dismissed summarily by his employer – in that case, there is an immediate disengagement or separation without notice; Thus, the employee loses his entitlement to notice or payment in lieu thereof.

In law, he is deemed to have committed an offence or been involved in an act which strikes at the root of the employment relationship and which amounts to a repudiation of the contract.

The following representative acts of misconduct on the part of the employee may be considered as responsible for summary dismissal:

(i) Infidelity
(ii) Corruption and the taking of bribe/kickback
(iii) Fighting on duty/assault
(iv) Drunkenness/drug addiction
(v) Contracting debts and other pecuniary embarrassment
(vi) Gross immorality
(vii) Willful disobedience or insubordination
(viii) Use of bad language at work
(ix) Incapacity
(x) Professional misconduct

Also relevant to a valid and total understanding of the concept of summary dismissal are the following;

(1) Pre-requisites for exercising the act of dismissed
(2) Dismissal for incompetence
(3) Retrospective dismissal

SELF ASSESSMENT EXERCISE 2

(1) What do you understand by the phrase 'Summary Dismissal?
(2) Enumerate the various acts of misconduct that may compel an employer to exercise his rights of summary dismissal of an employee.

3.3 MISCONDUCT

The law is that there is no fixed rule defining the degree of misconduct which will justify dismissal. A contract of employment may, sometimes contain express grounds for summary dismissal or confer on the employer a discretion to determine what amounts to misconduct.

Where, however, there are express grounds as to what would amount to misconduct, it is the duty of the court to construe the contract so as to decide whether the act of misconduct alleged is one of those contractually stipulated.

Where on the other hand, the ground for summary dismissal is subjectively worded so as to reserve to the employer the discretion to determine what amounts to misconduct, the question is "is this contrary to public policy as ousting the jurisdiction of the court?

In *MOELLER v. MONIER CONSTRUCTION CO (NIG) LTD (1961) 2 ALL N.L.R.167,* it was held by the Nigerian Supreme Court that it was not necessary for the employer to prove that the conduct, on the basis of

which he exercised his discretion to dismiss the employee, actually brought it to disrepute.

There are two major types of misconduct. These are:

(1) Antecedent Misconduct

This will arise where an employee has been guilty of misconduct unknown to his employer, the discovery of that misconduct, if not condoned, would validate an otherwise wrongful dismissal.

(2) Misconduct Justifying Dismissal

These include;

(i) Incomplete and negligence
(ii) Crime
(iii) Absence from work
(iv) Drunkenness
(v) Immorality
(vi) Abusive language

When Summary Dismissal Will Be Ineffective for Breach of Applicable Procedure

The general rule is that an employer in summarily, and justifiably dismissing an employee need not follow any procedure. Exceptions to this rule were propounded in the case of *JIRGBAGH v. U.B.N PLC (2000) F.W.L.R (PT. 26) 1790 at 1807-8 by Chukwhumah Eneh J.C.A.*

(1) Where the contract itself, though not regulated by any legislation, has made provision for the procedure to be followed when termination is for misconduct. The summary dismissal of the employee in breach of the contractual procedure would render the dismissal wrongful.

(2) Where a statute or a subsidiary instrument provides the procedure to be followed when the dismissal of an employee is on disciplinary grounds, the requirements of the statute must be complied with when the removal of the employee is for misconduct, otherwise the dismissal would be a nullity.

(3) Where the employment is public and pensionable the employer cannot effectively determine the employment on grounds of misconduct without giving the employee a fair hearing, not withstanding that there is no statute prescribing the procedure to be followed when the employment is to be determined for misconduct. *See OLATUNBOSUN v. N.I.S.E.R. COUNCIL (1988) Vol. 19 N.S.C.C.1025.*

SELF ASSESSMENT EXERCISE 3

(1) Examine the major forms of misconduct likely to terminate a contract of employment.
(2) Highlight the exceptions to termination of contract of employment by summary dismissal as a result of misconduct.

3.4 Wrongful Dismissal

Wrongful dismissal is a termination of contract of employment in breach of the express or implied mode, for the determination of employment contract.

Wrongful dismissal entails "….the objective element of the discontinuation of the exchange of work for wages; and the subject element of the intention to end the employment relationship."
This form of dismissal occurs where the employer terminates the contract without giving notice, in breach of a provision for notice, or gives a notice which is shorter than the requisite notice.
There will also be wrongful dismissal where the employer terminates a contract for a fixed term before the expiry of its terms, for no justifiable reason.

SELF ASSESSMENT EXERCISE 4

What do you understand by the phrase *"wrongful dismissal?"*

3.5 Place of Motive in Termination Cases

It is trite law that where a contract of employment has been terminated properly, the motive or intention which actuated the termination is irrelevant. Thus in *SOGBETUN v. STERLING PRODUCTS LTD (1973) N.C.L.R.323,* the plaintiff's appointment was validly terminated by one month's salary in lieu of notice.

The plaintiff contended that the termination was wrongful since it was motivated by her refusal to succumb to the sexual advances of her employer. *DOSUNMU J,* in reiterating the well settled law that motive is immaterial when termination is valid said;

> *"Where an employee is lawfully dismissed by being given the notice or payment in lieu of notice stipulated in the contract of employment; the employer's motive in dismissing him is irrelevant, and the fact that the employer has a bad motive or give an untrue reason does not make dismissal wrongful".*

SELF ASSESSMENT EXERCISE 5

What is the effect of proper proof of motive in the termination of employment contract?

4.0 CONCLUSION

This unit has exposed the learner to the concept of termination of contract of employment and it has sufficiently demonstrated the fact that there are laid down rules and guidelines for termination of employment contract.

5.0 SUMMARY

The effect of this unit includes;

(1) Meaning of termination of contract of employment
(2) A discussion on the various modes of termination of employment contract
(3) An elaboration on the various applicable exceptions thereto.
(4) The place of motive in employment termination procedure.
(5) Discuss the exceptions laid down by the Court of Appeal in *JIRGBAGH v. U. B. N. PLC (2000) F.W.L.R (PT.26) 1790*.

6.0 TUTOR-MARKED ASSIGNMENT

(1) What do you understand by the concept of termination of employment?
(2) Discuss the various methods of termination of contract of employment.
(3) Expatiate on the phrase *'summary dismissal'*
(4) Examine the various acts regarded as misconduct in employment contract termination.
(5) Discuss the exceptions laid down by the Nigeria Court of Appeal in *JIRGBAGH V U.B.N. PLC (2000) F.W.L.R. (PT.26) 1790*
(6) What is the place of motive in termination cases?

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.

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UNIT 2 TORTIOUS LIABILITY AND TRADE DISPUTES

CONTENTS

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 tortuous liability either by f con 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 Idoning 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 or in 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 is rendered incapable of performing his contractual obligations.
The highpoint 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, it 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 existences 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 tortuous liability in respect of trade dispute are 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 43(1) of the Trade Union Act.
In the same vein, section 23 of the Act provides the union absolute immunity from tortuous 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 tortuous act alleged to have been committed by or on behalf of the trade union in contemplating 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 ASSESMENT 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 constitute tortuous liability in any of the contrary. 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 3 TRADE DISPUTE

CONTENTS

1.0 INTRODUCTION

The main purpose of this unit is to examine the various models or means by which disputes arising from industrial relation are settled by this, is aimed at reviewing the enabling law connected thereto.

2.0 OBJECTIVES

The relevant and most prevailing statute in relation to trade dispute Act Cap 432 LFN, 1990. The statute has by its relevant provision laid down the rules to be followed in case of an industrial dispute and likely consequences in the event of non-compliance with these rules.

This unit is meant to discuss the various models or means of settlement of industrial dispute advantages, disadvantages and suggestions for improvement.

3.0 MAIN CONTENT

This section will deal with the substance of Trade Dispute and contemplation in furtherance of a trade dispute.

3.1 What is Trade Dispute?

Section 52 of the Trade Unions Act, cap 437 and section 47(1) of the Trade Disputes Act, cap 432, LFN 1990 respectively define a *"trade dispute" as,*

> *"Any dispute between employer and worker or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person."*

From the foregoing definition, for there to be a trade dispute, the

following must be present:

i. The dispute must be between proper parties i.e. between employer and workers or between workers inter se.
ii. The subject matter of the dispute must involve any of;

a) The employment or non-employment, or
b) The terms of employment; or
c) The condition of work of any person.

3.2 In Contemplation or in Furtherance of a Trade Dispute

A. In Contemplation

This has been defined as *"an act done in contemplation of a trade dispute"*

However, it has been held that for a trade dispute to be *"in contemplation"* or *"Imminent"*, there must first be a demand made on employers by employees or their union and the employer must have rejected the demand even though no active dispute has yet arisen.

Therefore, a trade dispute is in contemplation once a demand is made on an employer by his employees and has been rejected, prior to the employees taking industrial action in pursuance of their demand.

B. In Furtherance

The law is that once a trade dispute has become active, through industrial action, an act is done in furtherance of that dispute if it was done with the purpose of helping one of the parties to a trade dispute to achieve their objectives in it.

The test to be applied in determining whether an act was done in furtherance of a trade dispute is subjective, rather than objective. By this way the real motive of the disputing parties could be easily uncovered.

SELF ASSESSMENT EXERCISE 3

1. What is a trade dispute in the contemplation of section 52 of the Trade Unions Act and section 47(1) of the Trade Disputes Act, 1990?
2. Differentiate between these terminologies.
   I. In contemplation and
   II. In furtherance of a trade Dispute.

4.0 CONCLUSION

In this unit we have been able to see what usually constitutes tortuous liability on any of the contracting parties under a contract of employment. We have also been able to know what trade dispute is vis-a-viz the relevant defence to such disputes as provided by the enabling statutes.

Therefore, it is pertinent to say that if the parties to a subsisting contract of employment could maintain their respective obligations under the contract, less trouble will have to be solved.

5.0 SUMMARY

In this unit, efforts have been made to expand the knowledge of the student with a view to understanding the fact that no contract of employment is devoid of problems when it comes to the point of implementation of the terms.

There highlights are stated hereunder;

1. An understanding of the basic concept of torts in relation to Trade Disputes and trade Unionism.
2. Criminal and civil conspiracies distinguished.
3. The effect of inducement that causes a breach of contract in a contract of employment.
4. The elements of the tort of conspiracy.
5. The various available defences to the defendant.
6. The protections offered the unionists and the unions by the enabling acts.
7. The meaning of a trade dispute.
8. The relevance of acts done in contemplation and in furtherance of a trade dispute.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define conspiracy in relation to trade disputes.
2. Examine the elements of the tort of conspiracy and the available defence to a defendant.
3. Discuss the relevance of section 23(e) and 43(c) of the Trade Unions Act, cap 437 LFN 1990.
4. What is a Trade Dispute?
5. Differentiate between these terminologies:

I. In contemplation, and
II. In furtherance of a Trade Disputes.

7.0 REFERENCES/FURTHER READINGS

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

Freeland, (1976). *The Contract of Employment.*

UNIT 4 SETTLEMENT OF TRADE DISPUTE

CONTENTS

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 non-conformity 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 contravences 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 it 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 inconsistence. 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, are not only empowered to enforce their awards but also to commits 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 disputes 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 CONCILLIATION AND ARBITRATION

CONTENTS

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 procedure 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 is 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 settle 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 world over.

SELF ASSESMENT 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 concern.

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 section 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 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 any irregular 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 with the 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 discussed in the last unit, but more extensively it has been dealt with within this 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 as important 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.

MODULE 3

UNIT 1 PROTECTING HEALTH AND SAFETY

CONTENTS

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 material 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 promises 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 if 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 rest to be applied is "*forseeability"*. In other words, a part of a machinery is dangerous if it is a reasonably forseeeable as a 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 a 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, 1990?

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

The purpose of this unit is to examine those areas of contract of employment that may result in fortuous 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 statue.

2.0 OBJECTIVES

This unit deals with common law torts which a trade union, its officials and members are prove to commit 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 employers 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 case the courts will be prepared to infer from the immediate circumstances of facts leading to the conclusion.

Res lpsa 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 contravent, 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 stationery 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.
Inspite 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 provision 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, them 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 employee. 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 at the risk against the precautions necessary to affect it. The risk is measured not only in terms of frequency, but also of seriousness. All the facts of the care 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 cares 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 stuff, 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 section73 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 cooperatives 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 tort feasors.

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 dependant {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

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 voluntary of 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 bares 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 client 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 claimants 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.

Forseeability 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 reckonings he 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 witness might have become hazy and, in some cases, vital witness 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 or 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.

Munkman, *Employer's Liability,* (9th edition).

UNIT 4 THE WORKMEN'S COMPENSATION ACT

CONTENTS

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 employee. 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 unincorporate 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 permanent incapacity of the workman, the accident would be deemed to have arisen 'out of and in the course of his employment, not withstanding 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 MacNaghten* , 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 cleared 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 sales room 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 Machime [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;" *Arisen 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 Permanincapacity:

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 be 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 ASIGNMENT

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.