LECTURE NOTE

ON

GET 511
(ENGINEERING LAW)

COURSE CODE: GET 511 - ENGINEERING LAW

COURSE CONTENT – 2 UNITS

1. LEGAL DEFINITIONS AND SPECIFICATIONS: Law, ethics and conduct in engineering;

2. LAW OF CONTRACT: engineering contracts and contract documents, enforceability of contracts.

3. INDUSTRIAL RELATIONS: employment law and unionism, terms and conditions of employment

4. INTELLECTUAL PROPERTY: patents, trademarks, copyrights, license and royalty; technology transfer issues;

5. SAFETY AND ENVIRONMENTAL LAW: health and safety law, environmental guidelines and laws; Technology impact assessment: responsibility and liabilities to worker and staff, users and public.

6. LAW SUITS: court proceedings and Engineer as a witness

MODULE 1
LEGAL DEFINITIONS AND SPECIFICATIONS

1.0 Definitions

i. Law: It is a set of rules that are created and enforced through governmental or social institutions in order to regulate behavior and ensures that individuals or a community adhere to the will of the state. In other words, it is a rule or mode of conduct or action that is prescribed or formally recognized as binding by a supreme and controlling authority, or is made obligatory by a sanction (as an edict, decree, order, ordinance, statute, rule, judicial decision) made, recognized, or enforced by the controlling authority.

ii. Engineering law is the empirical study of the application of laws and legal strategy in engineering. It is an applied law aimed to explain how law interacts with industry. Empirical evidence is information that verifies the truth (which accurately corresponds to reality) or falsity (inaccuracy) of a claim. Engineering is the creative application of scientific principles to design or develop of structures, machines, apparatus, or manufacturing processes, or works utilizing them singly or in combination; or to construct or operate the same with full cognizance of their design; or to forecast their behavior under specific operating conditions; with regards to economics of operation and safety to life and property. Hence, law that would regulate engineering profession and activities is importance to the operation and safety of life and property

iii. Constitution: A constitution is an expression of the political will of the people, a statement, or an agreement, as to how the people are to be governed, by whom, and with what responsibilities. A constitution is a document, or a group of documents, laws or conventions, which outline the system of government for that State/Country.

iv. Rule of Law: "The doctrine of English law expounded by Dicey, in Law of the Constitution, that all men are equal before the law whether they are officials or not, so that the acts of officials in carrying out the behests of the executive government are cognizable by the ordinary courts and judged by the ordinary law. The rule of law is defined in the Encyclopedia Britannica as "the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power. Hence, it is the political philosophy that all citizens and institutions within a country, state, or community are accountable to the same laws, including lawmakers and leaders.

1.2.1 Legal Institutions: The institutions which enforce and uphold this rule of law. In Nigeria, they are the;

a. Legislature: which makes the laws
b. The Executive: which administers or enforce the laws, and
c. Judiciary: which interpret/declares the law, and what the rights of the individual are under the law.

1.2.2. Legal System: A system has been defined as the principles or procedures for the classification of laws, matters or procedure relating to them. It can also be defined as a body of rules including the principles, rules or doctrines associated with them that have the force of law in a given society.

It should be noted that from a technical standpoint, there are as much legal systems as there are sovereign independent countries. For example, Nigeria has its own legal system which has been said to consist of

each totality of laws or the legal rules and machinery which operate within Nigeria as a sovereign and independent African country. However, on a larger scale sovereign countries are grouped into larger legal system classifications due to them sharing similar fundamental characteristics.

The grouping of countries into legal system doesn't necessarily mean that all their laws are identical. These individual systems are grouped into larger classifications because they share similar fundamental principles. For example, one similar characteristic of common law legal system is the doctrine of judicial precedent. Some of the legal systems practiced in the world today are:

a. International law
b. Constitutional and administrative law
c. Civil law
d. Common law
e. Criminal law
f. Contract law
g. Customary law
h. Tort law
i. Property law
j. Equity and trusts
k. Religious law such as Sharia law etc.

There are different types of laws to be considered. They are:

i. Divine Law
ii. Eternal Law
iii. Natural Law
iv. Human or Positive Law

i. **Divine Law:** Divine Law is referred to as laws made by Almighty God to govern the affairs of man. A good example of divine law can be found in Christian laws as found in the Bible. These laws are given by God in order to guide the affairs of man. The reason behind the use of divine law stems from the fact that God, accepted as all knowing and all wise, is in the best position to make laws for the use of mankind.

ii. **Eternal Law**: The word eternal means something that would last forever. Eternal laws are laws that have been applied since the beginning of time and would exist till the end of time. These laws cannot be changed. A very good example of eternal law is the law of gravity. From the inception of time, it has been understood that what goes up must come down. This law would not be changed and is thus right to be regarded as eternal.

iii. **Natural Law:** This law is said to be the law that is innate in all mankind and can be deduced through the use of reason. For example, it is accepted in all cultures that murder is wrong and should be punished. Natural law is said to be the guide which positive law must follow in order for it to be valid. If Positive Law is at variance with natural law, it could lead to injustice in the society.

iv. **Positive or Human Law:** Positive Law can also be regarded as human law. These are laws made by man in order to guide the conduct of members of the society. They are laws made by persons

given the authority to do so either directly or indirectly by the society. Once a law has been enacted by persons in authority, it is valid.

1.2.3 Classifications of Law

The classifications of human law are the different categories into which all areas of law can be collated. A particular classification of law encompasses all types of law but it distributes them according to a particular unique characteristic. The following are the major classes of law:

1. Public and Private Law
2. Civil Law and Criminal Law
3. Substantive and Procedural Law
4. Municipal and International Law
5. Written and Unwritten Law
6. Common Law and Equity

1. Public and Private Law: Public Law is that aspect of Law that deals with the relationship between the state, its citizens, and other states. It is one that governs the relationship between a higher party, the state and a lower one, the citizens. Examples of public law include Constitutional Law, Administrative Law, International Law and so on.

Private law, on the other hand, is that category of the law that concerns itself with the relationship amongst private citizens. Examples include the Law of Torts, the Law of Contract, the Law of Trust and so on.

2. Civil Law and Criminal Law: Civil law is that aspect of Law that deals with the relationship between citizens and provides means for remedies if the right of a citizen is breached. Examples of civil law include the Law of Contract, the Law of Torts, etc.

Criminal Law, on the other hand, can be referred to as that aspect of Law that regulates crime in the society. It punishes actions which are considered harmful to the society at large. An example of criminal law is the Criminal Code Act, which is applicable in Nigeria.

When treating a criminal case, the standard of proof to be used is proof beyond reasonable doubt; Section 135 Evidence Act 2011. What this means is that before a conviction can be gotten, the state has to prove the commission of the crime to be beyond reasonable doubt.

On the other hand, in civil cases, the standard of proof is on the balance of probabilities; S.134 Evidence Act 2011. Also, the burden of proof shifts between both parties when they need to establish their case. Judgement normally goes in favour of the particular party that has been able to prove its case more successfully. In all, Civil law differs from criminal law in that it applies to interactions between citizens. Rather than dealing with crime, civil law deals with tort, or actions that are not necessarily illegal but can be proven to be damaging in some way. For example, if you sue a neighbor for cutting down a tree and letting it land on your premises that would be a civil case dealing with tort rather than a criminal case dealing with crime.

In many legal cases, both civil wrong and criminal offence may be identified and it's appropriate to use certain attributes to distinguish them. We shall demonstrate this distinction with two hypothetical examples.

CASE I: Mr. A wishes to procure goods from a supermarket located in a city centre where **Mr. B**, a custodian of personal items, has a rented space for keeping impedimenta under his care. After a while, Mr. **A** comes back to take her impedimenta, looked for the caretaker and eventually realized to her dismay that Mr. **B** had absconded. Now if Mr. **B** is eventually found, he would be made to face the following charges:

i. Conversion, which is a criminal offence
ii. Breach of trust, which is a civil wrong.

CASE II : A Macho driver, Mr. **D**, of a commercial minibus beats traffic light and in an attempt to escape being caught by traffic police, he rammed onto a car that has right of way, killing the driver and wounding another passenger in the car. The traffic police charged Mr. **D** on one side on traffic light infraction, reckless driving (civil wrong) and on the other manslaughter (criminal offence).

The point in these two cases is that true distinction lies not in the nature of the cases themselves but on the legal consequences arising therefrom. We discern in both cases that crime and civil wrong are involved.

3. Substantive and Procedural Law: Substantive law consists of written statutory rules passed by legislature that govern how people behave. These rules, or laws, define crimes and set forth punishment. They also define our rights and responsibilities as citizens. There are elements of substantive law in both criminal and civil law. Substantive law is used to determine whether a crime or tort has been committed, define what charges may apply and decide whether the evidence supports the charges. Let's say a person is caught drunk driving. Substantive law says that it is a crime punishable by a term in prison.

The substance of charges, or elements of a crime or tort, must be carefully evaluated to determine whether a crime or tort really exists. In other words, specific facts need to be proven true in order to convict somebody of a crime or a tort. In the case of a person caught driving while intoxicated, a few things would have to be proven:

- The person was driving the vehicle
- The person acted in ways that gave the police a reason to believe he or she was intoxicated
- The person was over the legal limit per a field sobriety and/or Breath analyzer test
- Once these things are proven, the person can be taken into custody. Next, procedural law will determine the steps the case must take.

Procedural Law: Procedural law governs the mechanics of how a legal case flows, including steps to process a case. Procedural law adheres to due process, which is a right granted to citizens. Due process refers to the legal rights owed to a person in criminal and civil actions.

In the case of an arrest, one can be charged with a crime but still has rights to a speedy, fair and impartial trial. Charges must be filed with the court within a specific time frame.

4. Municipal/Domestic and International Law: Municipal/Domestic law is the aspect of law which emanates from and has effect on members of a specific state. An example of a municipal Nigerian law is the Constitution of the Federal Republic of Nigeria 1999(as amended) which applies only in Nigeria.

International law, on the other hand, is the law between countries. It regulates the relationship between different independent countries and is usually in the form of treaties, international customs, etc. Examples

of International law include the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

5. Written and Unwritten Law: A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country. Unwritten laws, on the other hand, are those laws that are not enacted by the legislature. They include both customary and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature.

An example of this is the good neighbour principle established in the case of Donoghue vs. Stevenson. The principle posits that manufacturers of products should take utmost care in their manufacturing activities to ensure that the consumption of their product doesn't result in harm to the consumer. This principle is not enacted in a statute but is a case law which is applicable in Nigerian Courts.

6. **Common Law and Equity**: Common law typically refers to laws based on precedence and the rulings of judges who hear a case in a courtroom. Equity, on the other hand, refers to laws that are similarly established by court rulings but deal with judgment and justice through equitable decisions and fairness. While proceedings regarding the two are somewhat similar today, in the past they were divided into two different courts.

Both common law and equity stem from the judicial and legal history of England. These terms and methods for justice have found their way into many legal systems with roots in the laws of England, such as the US and other areas that were English colonies like Nigeria. Most cases in common law are heard by a jury, with a judge as arbiter, and decisions can result in punishment or financial restitution. Equity cases, however, are typically heard only by a judge who passes judgment on the case, which can take the form of action or cessation of action by one party. For example, someone who steals a computer might be ordered by a common law court to repay the value of the computer to the wronged party, which would be just but may not be fair. A court of equity, on the other hand, could order the computer be returned to the owner as a more equitable solution to the situation. Common Law is the system of law which is based on judges' decisions and on custom rather than on written laws. It could imply that which is not from legislation (statute). Statute is law made by the House of Assembly.

Thus, common law also known as judicial precedent or judge-made law is the body of law derived from judicial decisions of courts and similar tribunals. The defining characteristic of "common law" is that it arises as precedent. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts, and synthesizes the principles of those past cases as applicable to the current facts. If a similar dispute has been resolved in the past, the court is usually bound to follow the reasoning used in the prior decision. If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), and legislative statutes are either silent or ambiguous on the question, judges have the authority and duty to resolve the issue (one party or the other has to win, judges make that decision). In equity, the body of principles constituting what is fair and right. For example as per the company policies managers should use equity in dealing with subordinate employees.

Thus, in litigations, the knowledge will guide the litigant on the correct rule to employ. However, when conflict arises in their application, equity prevails. In this way, it is obvious that interpretations are given in appropriate atmosphere of either common law or equity.

Mr. A leased a premises from **Mr. B** (the owner), under equitable lease. In other words, it was not a formal lease that would specify the conditions of lease. No formal documents were crafted to indicate the rights and privileges arising therefrom. Shortly afterwards, Mr. **A** converts the premises to the use of his company named Saxxon. The lessor Mr. **B** discovers this and claims that Mr. **A** (Isaacson) had breached a fundamental element of the lease and then ejected him from the premises. Mr. **A** goes to court to seek remedy under equity because he argued, using confession and avoidance plea, that although he breached the agreement, but the name of his company (Saxxon) that he transferred the lease to is still himself because as he ingenuously argued, Saxxon, the company's name, is the latter part of the name, Isaacson, in twisted form.

Held: Isaacson has erred. He breached the oral agreement by transferring the lease to his company.

1.3 The Social Significance of Law

The knowledge of law enlightens people on the legal right and duties which individuals need to exercise in any given society. In this regard, when people in the society know their rights and obligations, the society tends to operate with little trace of rancour. In this way, law is seen to cement society through the enlightenment it offers.

Law, too, can provide basis for change in a society in that it establishes a system of jurisprudence which forms a theoretical framework for evaluating conducts of people or groups. It sets standards for judgment of individual or group behaviour. If an individual or a group conducts themselves in an unworthy manner that is inimical to social justice, which if not addressed can promote disorderliness and social injustice. The law is there to provide the right course of action. Thus law is an essential medium of change. Besides, the knowledge of law provides understanding on the way public affairs are conducted. Moreso, law is important in the following respects:

i. It promotes accuracy of expression
ii. The knowledge of law affords a person a natural ability to argue persuasively
iii. It also provides finely honed intuition for interpreting literary works because it deploys logic, social values and systematic approach to analyzing issues and situations.

In view of the foregoing facts and points, engineers, being significant stakeholders in the society, need ample knowledge of the law especially civil proceedings so that they can know how to act in the society without getting entangled in litigations. The engineer is a professional businessman and therefore needs to operate ethically in the society thereby command respect in the society.

It will be recalled that engineers, by virtue of their profession, are involved in research and innovation, design and development of goods and services. In the course of undertaking these duties, they may directly or tangentially get entangled with product liability issues that may amount to tortuous liability. Thus basic legal knowledge could guide them on how best to deal with matters of that nature.

Again, many engineers, like some of their peers in other professions – medical doctors, lawyers, accountants, architects etc. – had been charged for professional negligence with its attendant legal

consequences. In that sense substantive law is needed to provide knowledge of engineer's rights, duties, liberties and powers. Taken together, there is justification to embody law in engineering curriculum. However, the scope and depth of such law and knowledge need to be relevant to engineering practice so that engineers can also serve well as expert witnesses in law suits. Beyond this, it has been emphasized that engineers need humanities and social science knowledge to function as an accomplished professionals.

1.3.1. Terminology of Proceedings

Proceeding whether civil wrong or criminal offence, has applicable terminology. We shall consider the two sides separately.

i. Criminal Proceedings

In this, the following language is adopted. Prosecutor prosecutes a defendant and the outcome of the prosecution, if successful is called conviction. Thus if an accused is convicted it means that a case of alleged crime has been proved and the person is guilty of the accusation or allegation. The suspect now is called a convict. There are legal consequences that may follow the conviction. The range of punishment varies from life imprisonment to option of fine. In a case where the person is not found guilty, the suspect is discharged and acquitted, thus declaring that they are free to go and not come back to answer the case again. Again the suspect may be released on probation – discharged but not acquitted. Such an accused could be summoned on the same issue if necessary. It means the person is on probation.

ii. Civil Proceedings

In this, there is the plaintiff, the person who brings a legal action in a court of law against another called the defendant. Also, a plaintiff could be referred to as complainant or claimant. If the legal action succeeds, judgement is entered in favour of the plaintiff and to be paid a determined amount by the defendant. It may, on the other hand, involve transfer of property to the plaintiff, or require the defendant to perform certain contracts. If however, the defendant is not pleased with the judgement, they may seek judicial review of the judgement entered in favour of the plaintiff. Several approaches are available to the defendant. All depending on the nature of the case. In appeal case like this, the defendant turns to be the applicant and the plaintiff becomes the respondent. Further, the word **guilty** is preferred in criminal proceedings, while **liable** is used for civil proceedings. Perhaps certain of these terms require definition:

a. **Writ**: the term refers to a document written by a court to summon or require someone to do or refrain from doing something.
b. **Writ of Centiorari**: this concerns a written application, seeking Supreme Court decision to hear an appeal from a lower court. Put in another way, it refers to a decision by the Supreme Court to hear an appeal from a lower Court.
c. **Prohibition**: it refers to a law or decree to prohibit something (to say that an action is illegal).
d. **Cert. denied**: it is an abbreviation used in legal citation to indicate that the Supreme Court denied a petition for writ of certiorari in the case being cited.

e. **Habeas Corpus**: it denotes a writ requiring a prisoner to be brought into Court for a judge to decide if their detention is legal.
f. **Order of Mandamus**: it is a writ or court order issued by a high court to a lower court or to a tribunal, public official, etc. instructing it or them to perform a duty, especially one which it should have performed.

1.3.2 The Dimension of Civil Wrong

Civil wrongs can be classified under four headings as follows:

i. **Breach of Contract**: the contract can be written or oral. Also, it should be noted that any time we make, say, a simple transaction or perhaps board a vehicle, we are directly doing contract.
ii. **Tort**: Tort refers to any form of wrong. Thus tort implies the following wrongs;
   - Assault
   - Battery
   - False imprisonment
   - Trespass
   - Conversion
   - Defamation of character
   - Negligence, and
   - Nuisance

iii. Breach of Trust

Trust refers to enforceable obligation placed on a **trustee** by a **settlor (testator)** in the interest of a **beneficiary.** Trust arises in situations like administration of will etc.

iv. Quasi-contract: this refers to what seems to be a contract that can morph into actual contract under certain conditions such as when one seeks justice. Take for example a situation where you use POS to make payment. One may give cash card to the seller who now keys the amount and the buyer checks on their own to ascertain if there was over-payment in the transaction. It could also happen that under-payment could result depending upon what the seller punched in the POS. Any of these situations could make either party to demand justice if they feel shortchanged particularly the payer when they get alert. Also, for the payee, if they eventually realize underpayment, may seek that the balance should be made up by the payer and where such justice is being denied, the seller may treat the case as a breach of quasi-contract. We shall also note here that when the decision of a lower court is ruled against by the Superior Court, the situation is variously referred to as:
   - Decision of lower court being reversed
   - Conviction being quashed
   - Verdict of jury being set aside

In legal terminology, information refers to a document making a criminal charge before magistrate.

1.3.3 Pleadings

It is considered also necessary that the engineer should understand the legal language of proceedings, particularly civil proceedings under which Business Law is situated. On the issue of pleading of the plaintiff (declaration) and that of the defendant (defence), it is said that any part of the declaration that clearly stands alone as grounds for action is called a count. If the action of a plaintiff succeeds on any or all of those counts, special, aggravated and/or general damage are entered into in favour of the plaintiff. However, before the judgment, the defendant's defence is pleaded. This can be crafted in three ways.

i. Pleads a **Traverse**: in this version, the defendant canvasses, albeit persuasively, to contradict the facts provided by the plaintiff and thereby show that they are hollow and groundless.

ii. Pleads a **Confession and Avoidance**: in this, the defendant openly admits the allegation of facts by the plaintiff and goes ahead to make void and porous those facts thereby whittle down their legal effects. The defendant may even bring in plea of contributory negligence on the part of the plaintiff.

iii. **Objection in point of law**: in this variety, the defendant may again admit the plaintiff's statement of fact but plead that in law those facts disclose no cause of action.

1.3.4 Jurisdiction

Jurisdiction means Power or right of a legal or political agency to exercise its authority over a person, subject matter, or territory. Jurisdiction over a person relates to the authority to try him or her as a defendant. Jurisdiction over a subject matter relates to authority derived from the country's constitution or laws to consider a particular case. Jurisdiction over a territory relates to the geographic area over which a court has the authority to decide cases. Concurrent jurisdiction exists where two courts have simultaneous responsibility for the same case.

1.4 Sources of Nigerian Law

i. **Customary Law:** Customary law form an important sources of the Nigerian law because they govern most of our personal laws (e.g. law of marriage, chieftaincy titles, etc.). However, for its validity the customary law must be existing native law or custom and not the native law of ancient times. It must be what the people are practicing now and not in the past. Secondly, the native law or custom must not be a replacement for natural justice, equity and good conscience. Equity is exercised during practice of the law, and there is no provision for it in the constitution. Thirdly, the native law and custom must be compatible with any law of the land for the time is being enforced. Thus, an alleged rule of customary law must not be in conflict with a valid judicial decision on the same subject matter.

ii. **English Law:** First introduced into Lagos during the colonial administration and then into the rest of the country. It includes the common law of England, the doctrines of equity and the status of general application enforced in England.

iii. **Local legislature:** These are passed by the National Assembly or House of Assembly by the procedure of the constitution. It is also referred to as the common law.

iv. **Judicial Precedent:** one of the consequences of the English common law is the adoption of the doctrine of judicial precedent. It means that the decisions of the superior courts will be followed by

the inferior courts in appropriate cases. Thus, the decision of the higher courts will be binding on all other courts and it becomes the law of the land.

v.

1.4.1 Organization of Courts in Nigeria

Court is a place where legal cases are heard, in which evidence about crimes, disagreement, ete., is presented to a judge and often a jury so that decisions can be made according to the law. In Nigeria courts are organized or structured as follows:

i. **Supreme Court:** The Supreme Court is the topmost in the list. This is the highest court in the land. It has the jurisdiction to hear and determine appeals from the Federal court of Appeal. In addition, it has an original decision too. It arbitrates between the states and Federal Government. The Supreme Court consists of Chief Justice, and Number of Justices not exceeding 15.

ii. **Federal Court of Appeal:** It has jurisdiction to hear and determine appeals from Federal High Courts, State High Courts, Sharia Court and the Customary Courts of Appeal.

iii. **High Court**: The High Court is next in hierarchy. It consists of:

a. The Federal High Court

b. The State High Court

The Federal High Court has jurisdiction in such matters pertaining to or connected with the revenue of the Government of the Federation and other federal matters. The State High Court has the jurisdiction to try all kinds of civil and criminal offences. Almost at the same level with the high court is the Islamic Court of Appeal.

iv. **National Industrial Court:** The National Industrial Court of Nigeria also known as NICN is a court empowered to adjudicate trade disputes, labour practices, matters related to the Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act and appeals from the Industrial Arbitration Panel.

v. **Customary Court of Appeal:** This exercises appellant jurisdiction in civil proceedings involving questions of personal laws; something which the constitution did not provide for in the magistrate court. The states have the will to set these up all over the country. They have limited jurisdiction to hear civil cases.

vi. **Magistrate courts and District court:** these courts are established by the State to consider law of tort as essential for business settings and other related matters.

vii. **Customary/Area/Sharia Courts**

1.5 Code of Ethics and Conduct

A Code of Ethics governs decision-making, and a Code of Conduct governs actions. They both represent two common ways that companies self-regulate. They are often associated with companies, and provide direction to employees and establish a public image of good behavior, both of which benefit businesses of any size. However, any company large or small, public or private will benefit from having a set of documented rules in place where employees and other stakeholders can reference to ensure they are performing in their positions as expected by the company. Code of Ethics referred to general principles to help guide employee behaviour. The document outlines a set of principles that affect decision-making. For example if an organization is committed to protecting the environment and "being green", the code of ethics will state that there is an expectation for any employee faced with a problem, to choose the most "green" solution. A Code of Conduct applies the Code of Ethics to a host of relevant situations. A

particular rule in the Code of Ethics might state that all employees will obey the law. A Code of Conduct might list several specific laws relevant to different areas of organizational operations, or industry, that employees need to obey. The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment. For example, It might forbid sexual harassment, racial intimidation or viewing inappropriate or unauthorized content on company computers.

i. Similarities between Code of Ethics and Conduct:

Both Codes are similar as they are used in an attempt to encourage specific forms of behavior by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others inappropriate. In both cases, the organization's desire is to obtain a healthy range of acceptable behaviors from employees.

ii. Differences between Code of Ethics and Conduct:

Both are used in an attempt to regulate behavior in very different ways. Ethical standards generally are wide-ranging and non-specific, designed to provide a set of values or decision-making approaches that enable employees to make independent judgments about the most appropriate course of action. Conduct standards generally require little judgment; you obey or incur a penalty, and the Code provides a fairly clear set of expectations about which actions are required, acceptable or prohibited.

1.5.1 Engineering Ethics and Conduct

Engineering ethics is the field of moral principles that apply to the practice of engineering. The field examines and sets the obligations by engineers to society, to their clients, and to the profession. Codes of engineering ethics identify a specific precedence with respect to the engineer's consideration for the public, clients, employers, and the profession.

Many engineering professional societies have prepared codes of ethics. These have been incorporated to a greater or lesser degree into the regulatory laws of several jurisdictions. While these statements of general principles served as a guide, engineers still require sound judgment to interpret how the code would apply to specific circumstances. The general principles of the codes of ethics are largely similar across the various engineering societies and chartering authorities of the world.

The fundamental principles of the code of Engineers are to uphold and advance the integrity, honor and dignity of the engineering profession by:

i. using their knowledge and skill for the enhancement of human welfare;
ii. being honest and impartial, and servicing with fidelity the public, their employers and clients;
iii. striving to increase the competence and prestige of the engineering profession; and
iv. supporting the professional and technical societies of their disciplines.

The Fundamental Canons of Engineer’s codes of ethics are:

1. Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.
2. Engineers shall perform services only in the areas of their competence.
3. Engineers shall issue public statements only in an objective and truthful manner.
4. Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.

5. Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
6. Engineers shall act in such a manner as to uphold and enhance the honor, integrity and dignity of the profession.
7. Engineers shall continue their professional development throughout their careers and shall provide opportunities for the professional development of those engineers under their supervision.

1.5.2 Engineering Code of Conduct

There are several other ethical issues that engineers may face. Some have to do with technical practice, but many others have to do with broader considerations of business conduct. The purpose of this Code is to set standards of conduct for registered professional engineers, which
support the objective of the Professional Engineers Registration Act, to promote best practice in providing professional engineering services. Among other matters, and in line with section 30(3) of the Professional Engineers Registration Act, this Code includes obligations for registered professional engineers "to act fairly, honestly and in the best interests of a client".

i. **Know and comply with the law:** In providing professional engineering services, a registered professional engineer must know and comply with-

(a) the Professional Engineers Registration Act and the regulations made under that Act; and
(b) any other laws relevant to the professional engineering services, the professional engineer provides in the area or areas of engineering in which they are registered.

ii. Be honest and fair: A registered professional engineer who provides professional engineering services must act with honesty, fairness and integrity.

(a) A registered professional engineer must not- misinform, mislead or deceive any parties when providing professional engineering services; or
(b) permit their name to be used in relation to any work, document, presentation or publication to falsely represent their authorship of, responsibility for or agreement with the content or form of the work, document, presentation or publication.
(c) Deliver good practice of a professional engineering services

iii. A registered professional engineer:

(a) must exercise skill and diligence in the provision of professional engineering services; and
(b) must carry out professional engineering services with reasonable care to achieve the standard of the services, and within a reasonable time according to the timeframes agreed between a client and a professional engineer and, if employed, with their employer; and
(c) should seek peer review of the professional engineering services they provide, unless impractical to do so.
(d) A registered professional engineer must not engage in conduct that is detrimental to the reputation of the engineering profession or contrary to the public interest.

iv. Inform clients of the consequences of disregarded advice:

A registered professional engineer must take reasonable steps to inform a client and their employer, if employed, of-

(a) their professional concerns regarding a particular action or project; and
(b) the likely consequences for affected parties if professional engineering advice, decisions, or judgements are modified, overruled or disregarded.

v. Act in the best interests of a client

A registered professional engineer must-

(a) act in the best interests of a client unless it would be unlawful, unreasonable, or improper to do so; and

(b) refuse any services or products from a third party that are contrary to the best interests of a client.

vi. Act in area of professional competence: A registered professional engineer must not provide professional engineering services unless:

(a) the services are within their area or areas of competence; and

(b) they reasonably expect to be able to competently carry out the services.

(c) must not directly supervise an unregistered person unless that supervision is within the registered professional engineer's area or areas of competence; and

(d) must recognise where other professional advice is required and seek, or recommend the client and, if employed, the registered professional engineer's employer seek expert advice in appropriate areas; and

(e) must be honest about the nature of their qualifications and experience and not make any statements or publish any material that misleads or is likely to mislead a client or prospective client as to their professional competence.

vii. Directly supervise: A registered professional engineer who directly supervises an unregistered person:

(a) must not knowingly permit an unregistered person under their direct supervision to provide professional engineering services that fall outside their area or areas of competence; and

(b) must be competent in, and have sufficient knowledge of, the professional engineering services being carried out by the unregistered person; and

(c) must have sufficient control over any outputs of the professional engineering services to ensure that the professional engineering services being carried out by the unregistered person are at the standard expected of a registered professional engineer; and

(d) must take responsibility for the professional engineering services carried out by the unregistered person under their direct supervision.

viii. Maintain confidentiality:

A registered professional engineer must not use or disclose any confidential information of a client or an employer, if employed, unless-

(a) the client or employer authorises the use or disclosure; or

(b) the registered professional engineer is permitted or compelled by law to disclose the confidential information.

ix. Manage conflicts of interest:

(a) Before providing professional engineering services to a client, a registered professional engineer must disclose any actual, perceived or potential conflict with their personal interests or the interests of another client to each party that may be related to or affected by the provision of the services.

(b) When providing professional engineering services, a registered professional engineer must disclose any actual, perceived or potential conflict of interest to a client and employer, if employed, as soon as practicable after discovering the actual, perceived or potential conflict of interest.

(c) A registered professional engineer, who recommends the services of a third party to a client, must disclose to the client any personal or business relationship between the registered professional engineer and the third party.

x. Disclose endorsements and referrals:

A registered professional engineer must disclose to a client or prospective client-

(a) if the registered professional engineer receives, is likely to receive, or has been promised any payment, gift or other material advantage to recommend, endorse or comment on a product or service that is or is likely to be used in connection with the provision of professional engineering services to the client or prospective client; and

(b) any arrangement entered into where the client or prospective client has been introduced or referred to the registered professional engineer by a third party who the registered professional engineer has given or offered to provide a fee or reward for the referral of clients or prospective clients.

xi. Be impartial and objective: A registered professional engineer must not-

(a) give or promise to give a client or prospective client any inducement intended to improperly influence that person's decision-

(i) to engage the registered professional engineer to provide professional engineering services; or (ii) regarding the professional engineering services being provided by the registered professional engineer; or

(b) accept from any person anything intended to improperly influence the advice provided, or decisions made, by the registered professional engineer.

xii. Inform and communicate with clients: A registered professional engineer must-

(a) Take reasonable steps to ensure that a client is informed of decisions required of the client in respect of professional engineering services; and

(b) provide sufficient relevant information within a reasonable time to enable a client to make an informed decision in relation to the provision of professional engineering services; and

(c) respond, within a reasonable time, to a client's reasonable requests for information or other communications about the provision of professional engineering services to the client; and

(d) take reasonable steps to ensure that all information and material provided to a client is accurate and unambiguous.

(e) A registered professional engineer must communicate with a client or prospective client in a timely and effective manner regarding professional engineering services, fees, costs, outcomes and risks.

xiii. Maintain client records: A registered professional engineer must take reasonable steps to adequately protect, secure and store a client's paper and electronic records in relation to the provision of professional engineering services.

xiv. Resolve disputes: A registered professional engineer must make every effort to minimise and resolve complaints and disputes with a client that relate to the provision of professional engineering services. If a client makes a complaint to a registered professional engineer about a professional engineering service, the registered professional engineer must inform the person of the process that the registered professional engineer or their employer, if employed, has in place
for resolving complaints and disputes as soon as practicable after the complaint is made.

MODULE 2

LAW OF CONTRACT

2.0 Definition

This forms one of the first laws in business transaction and any transaction involves contract. Contract may be defined as an agreement between parties intends to give rise to obligations enforceable by law. There are two classes of contract.

a. Simple contract

b. Sealed contract

2.1 Simple Contract

These are agreements made either by words of mouth or in writing. As far as simple contract is concerned, there are some elements that are essential to make it enforceable. And one of them is **agreement**. The following conditions are essential for the validity of the simple contract

i. There must be offer and acceptance
ii. There must be consideration
iii. There must be the intention to create legal relation
iv. Capacity of the parties (i.e. they must be capable of contracting)
v. Legality and possibility (whatever we are contracting must be possible and allowed by law)
vi. There must be genuine consent.

When any of these elements is missing, the contract may be void ab initio or voidable. It is okay for the contract to be cancelled if one of the parties no longer wants it.

2.2 Contract Under Sealed

A contract under seal is also termed as sealed contract, special contract, deed, covenant, specialty contract or common-law specialty. A contract under seal is a formal contract which has the seal of the signer attached. A contract under seal must be in writing or printed on paper. It is conclusive between the parties when signed, sealed, and delivered.

Delivery is made either by actually handing it to the other party or by stating an intention that the deed be operative even if it is retained in the possession of the party executing it. This is the only formal contract, because it derives its validity from the form in which it is expressed and not from the fact of agreement, or from the consideration.

Contracts under seal also bear little resemblance to ordinary contracts. A contract under seal is a written promise or set of promises which derives its validity from the form, and the form alone, of the executing instrument. The only requirements are that the deed should be intended and should be signed, sealed, and delivered.

2.3 Offer and Acceptance

2.3.1 Offer

This is an expression of willingness to contract made with the intention that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. To be capable of acceptance, the offer must be definite or certain and unambiguous. Therefore, an offer that its terms are

incomplete or vague cannot serve as the basis of a contract. An offer can be made to a particular individual, to a group of persons or to the public at large. In the latter case, there could be an advert for rewards for services rendered.

CASE: Carlill v Carbolic Smoke ball Co.[1892], it is an English contract law decision by the Court of Appeal, which held an advertisement containing certain terms to get a reward constituted a binding unilateral offer that could be accepted by anyone who performed its terms. The case concerned a flu remedy called the "carbolic smoke ball". The manufacturer advertised that buyers who found it did not work would be awarded £100, a considerable amount of money at the time. Mrs. Louisa Elizabeth Carlill saw the advertisement, bought one of the balls and used it three times daily for nearly two months until she contracted the flu on 17 January 1892. She wrote to claimed £100 from the Carbolic Smoke Ball Company. They ignored two letters from her husband, a solicitor. On a third request for her reward, they replied with an anonymous letter that if it is used properly the company had complete confidence in the smoke ball's efficacy, but "to protect themselves against all fraudulent claims", they would need her to come to their office to use the ball each day and be checked by the secretary. Mrs. Carlill brought a claim to court. The barristers representing her argued that the advertisement and her reliance on it was a contract between the company and her, so the company ought to pay. The company argued it was not a serious contract.

The Carbolic Smoke Ball Company, represented by H. H. Asquith, lost its argument at the Queen's Bench. It appealed straight away. The Court of Appeal unanimously rejected the company's arguments and held that there was a fully binding contract for £100 with Mrs. Carlill. Among the reasons given by the three judges were (1) that the advertisement was not a unilateral offer to all the world but an offer restricted to those who acted upon the terms contained in the advertisement (2) that satisfying conditions for using the smoke ball constituted acceptance of the offer (3) that purchasing or merely using the smoke ball constituted good consideration, because it was a distinct detriment incurred at the behest of the company and, furthermore, more people buying smoke balls by relying on the advertisement was a clear benefit to Carbolic (4) that the company's claim that £1000 was deposited at the Alliance Bank showed the serious intention to be legally bound. The judgments of the court were as follows:

The company was found to have been bound by its advertisement, which was construed as an offer which the buyer, by using the smoke ball, accepted, creating a contract. The Court of Appeal **held** the essential elements of a contract were all present, including offer and acceptance, consideration and an intention to create legal relations.

2.3.2 Distinction between an Offer and the Invitation to Treat

An agreement can only be complete if the offeree (the person to whom an offer is made) indicates his acceptance. On his part, the offeror (the person who made an offer) must have done things possible in the formation of the contract. The offeror may merely initiate negotiations which may or may not ripen to an agreement. By this reasoning, an invitation to treat is not an offer as such but represents a process of negotiation that precedes the making of an offer. The issue of a catalogue for example or a display of goods in shop window is nothing more than an inducement for offer or an invitation to treat or due to do business and not an offer. This distinction also applies to auction sale in advert. If the auction sale does not however eventually hold, the contractor is not liable to undertake the sale. It was only an invitation to offer.

2.3.3 Acceptance

This is the final expression or assent to the terms of an offer. Acceptance may be determined by word of mouth where the offer was made orally. Open documents that have passed between the parties or may be inferred from their conduct. The offeree must accept the offeror‟s offer in the same term. In other words, he must unreservedly assent to the exact terms proposed by the offeror. But if instead of accepting the offer as a whole, he the offeree introduces a new element or terms which the offeror has not had the chance of examination, he is in fact making a counter offer. And the effect of this is that it destroys the original offer and no one is bound.

Case: HYPE V WRENCH

For example, in case of **HYPE V WRENCH:** the defendant on June 6 offered to sell an estate for £1000. On June 8, plaintiff went back to the defendant offering to buy the estate for £950. On June 27, the defendant wrote the plaintiff rejecting the offer. Finally on June 29, the plaintiff wrote that he was now prepared to pay £1000. But at that time of June 29, defendant is not ready to sell. The question to be decided by the court was whether the defendant was obliged to sell the estate.

Held: The court **held** that no contract existed because the plaintiff letter on June 8 was a complete rejection of the defendant offer of June 6 and therefore that offer having being destroyed no one was bound. Plaintiff was no longer able to revive it by changing his mind and tendering a subsequent acceptance.

2.3.4 Communication of Acceptance

Generally, there must be consensus ad idem (i.e. meeting of the mind) before a valid simple contract can be concluded. Therefore, even if the offeree has made up his mind to the acceptance, the agreement is not yet complete yet. There must be an external manifestation of assent i.e. some words spoken or act done by the offeree or his authorized agent which the law can regard as the communication of the acceptance to the offeror. Thus where the offeree has not communicated acceptance, his mere acquiesce in silence may not be taken as constituting acceptance.

Case: Felthouse v Bindley

In this case the plaintiff wrote to his nephew offering to buy his horse for £13.15 and adding “if I hear no more about him, I consider the horse mine at that price”. The nephew made no reply to this letter but instructed his auctioneer to keep that particular horse out of safe. The auctioneer inadvertently sold the horse and the plaintiff sued in conversion (conversion a civil wrong whereby some persons take possession of another person’s).

The court **held** that the action must fail because his offer to buy a horse had not been accepted by his nephew and the mere fact that the nephew instructed the auctioneer to set aside the particular horse and communicating his acceptance to the plaintiff did not constitute acceptance.

Sometimes the offeror indicates the method of communication of acceptance.

2.3.4.1 Acceptance through the Post Office

What happens when no particular method of communication is prescribed and the particulars are not in each other’s presence? For instance, where the negotiation had been conducted through the post. This

question arose as far back as 1818AD in the famous case of Adams V Lindsell. In the case, defendants and plaintiff were manufacturers and dealers in wool respectively. The defendant offered by post to sell wool to the plaintiff on September 2. In fact the defendant had misdirected their letter and so it got to the plaintiff on the evening of 5th September. That same night, plaintiff posted a letter of acceptance which was delivered to the defendant on 9th September. If the original letter had been properly addressed, a reply could have been expected by 7th September, but meanwhile on 8th September not having received such a letter, the defendants went ahead and sold the wool to the 3rd party. Plaintiff sued for breach of contract. The problem before the court was when might an offer made through the post be regarded as acceptable?

1. Is it when the letter of acceptance is put in the post?
2. Is it when the letter has been received at the offeror's address?
3. Is it when the letter has been brought to the actual notice of the offeror?

The court in this case preferred the first option. According to the court, there was sufficient act of acceptance when the plaintiff put his letter on the post on 5th September. This is so even if the acceptance letter never reaches the offeror because it is lost through an incident in the post or simply delayed.

2.3.5 Termination of an Offer

This can be achieved in the following:

i. **By expressed revocation**: The offeror may revoke the offer any time before it has been accepted. But the revocation of the offer will be of no effect unless and until it has been communicated to the offeree. There must be some overt act on the part of the offeror to withdraw the offer. The offeror must not only prove that he has done some act which manifests his intention, but also the act was brought to the knowledge of the offeree. But the offeror need not do this himself. It may be done by a third party. What is important is that the revocation has been brought to the knowledge of the offeree.

ii. **Lapse of time:** An offer which expresses or states that it lasts for a specific time only. But when the duration of the offer is not limited by expressed, the offer comes to an end after a reasonable time. What is reasonable time depends on all the circumstances. For example, the nature of the subject matter and on the means or methods used to communicate the offer.

iii. **Subjected to the condition which fails to be satisfied:** Failure of the condition subject to which an offer is made. Where the offeror makes his offer subject to the fulfillment of a condition, failure on the part of the offeree to fulfil the condition will prevent acceptance from taking place. Such a condition may be implied from the circumstances of the case.
For example, in **Financings Ltd. V Stimson (1962)**, it was held that regarding a customer's offer to take a motor car under hire purchase agreement, the offer being made to a finance company, was subjected to an implied term that the car remained in the same condition up to the time of the acceptance of the offer. In this case, the car was stolen from the dealer's premises and damaged before the finance company accepted the customer's offer and in consequence, the customer was not bound by any agreement.

iv. Death of one of the Parties: When one of the contracting parties dies before the offer has been accepted, the fact of death will cause the offer to lapse. The offeree will be precluded from accepting the offer if he had knowledge of the offeror‟s death. An important question is what if he (the offeree)

had no knowledge of the death? Thus the death of the offeror or offeree sometimes causes the offer to lapse. The position is not free from doubt, and may be summarized as follows:

The offer lapses when the offeree hears of the death of the offeror.

a. It seems that the death of the offeree will cause the offer to elapse. **Duff's Executors** Case (1886): D received an offer of some shares in return for certain shares held by Mr. D. Mr. D died without accepting, but his executors purported to accept.

Held: The offer had elapsed on Mr. D's death.

2.4 Consideration

Usually a contract under seal does not require consideration. Such a contract will be valid in the form in which it has been expressed. Except of course it can be proved that it was procured by fraud, duress, undue influence or that the contract was illegal. On the other hand, every sample of contract requires consideration for its validity. The absence of consideration will render such a contract unenforceable.

Consideration is the price to which the others promise is brought. It means that English law does not guarantee gratuitous promise. Something must have been given in return to the promise before the promise will be enforced. For the employer on the building site, the consideration will be the price paid or the promise to pay for the services rendered. For the contractor who is employed, the consideration that he gives will be carrying out of the work. Where the consideration is an act, it is called **executed consideration**. Where it is a promise to act, it is called **executor consideration**.

There are some certain technical rules which are applied to consideration and which decide whether or not, the consideration is valuable enough to be relied on as the foundation of a contract. Some are as follows;

a. Consideration is required for all simple contracts
b. Consideration must be of some value but need not be adequate. The general rule is that consideration need not be adequate or equivalent to the promise but it must be of some value to the eye of the law. It is not for the judge to enquire into the adequacy of consideration. In other words, it is not the function of the court to measure the comparative value of the defendant's promise in relation to the act of promise given by the plaintiff in exchange for it. The parties must be left free to make their own bargain and determine for themselves what they consider is the proper value of their acts or promises.
c. Consideration must be legal. As a general rule, a contract cannot be enforced if the promise of one or both parties is illegal. An illegal promise has no value in the eye of the law and therefore cannot constitute consideration.
d. Consideration must not be in the past. Past consideration is one which is wholly executed or finished before a promise is made. For example, X does not know how to swim. He goes to the swimming pool to find some young children swimming. He says to himself if these children can swim how about me. He undresses and dives into the pool and begins to swallow water. But Y sees X drowning and dives to save him. When he recovers, he says to Y but for you I would have lost my life so X promises to pay N1000.00 in consideration for saving him. But he never pays and Y sues for breach of contract. The question is can he succeed. He cannot because X promise was made after the act. It has been said therefore that past consideration is no consideration at all. At least a past consideration runs as an expression of gratitude for past favours or service or may even be a gift.

e. Consideration must move from the promisee to the promisor. This simply means that a person to whom the promise is made must furnish with the consideration. The person therefore can only enforce the promise if he himself provided consideration for it.

For example,

i. Mr. A, promised to pay a sum of money to Mr. B if Mr. C will do certain act. B cannot enforce the promise.

ii. where somebody performs an act for which a reward was placed without his realizing this. If after the act, he learns of this, the question is: Is the person entitled to the reward by law bearing in mind that he did not furnish any consideration. As a matter of fact, and on point of law, since he did not furnish any consideration, the contract is not enforceable.

iii. The next case is a situation where A owns B, N100.00. Suppose A has N50.00 only and asks B to accept and where B does so, that might clear the obligation. Well, the general rule in law is that any previous obligation before a contract or an act must be fully honoured (exactly and completely). On the other hand, there is an excuse clause in law furnished by the law of Equity. This makes use of the doctrine of Estoppel.

2.6 Intention to Create Legal Relation

Besides the elements of offer and acceptance and consideration, there must also be the intention to create or enter into legal relation in order to bring about a valid simple contract. This is so even although the arrangement is supported by consideration. It may for instance have been merely a domestic family or social arrangements. In these cases there is a presumption that no legal relationship was intended.

For example, if A and B agree to have a lunch together and A promises to pay for the food if B will pay for the drink. It is difficult to deny the presence of consideration in such an instance and yet it is equally clear that no legal ties were contemplated or created. However in building, engineering and other commercial agreement, there is a presumption that a legal relationship was intended by the parties. But it is possible to exclude this presumption by including a clause that the agreement should not be binding in law. It seems necessary therefore to regard the intention to create legal relation as a separate element in law of contract.

2.7 Capacity to Contract

Capacity in law denotes the ability to incur legal liability or right. This automatically implies that some persons do not possess the capacity to make a contract or at least have their capacity impaired. An outstanding example is that of an infant or a minor. A minor is a person who has not reached the age of maturity. On some countries, the age is 18 years. While certain contracts are binding upon a minor, others are not. A minor has a capacity to enter into legal relationships and can be sued for necessaries.

Necessaries are goods suitable to the condition of life of such minor and to his actual requirements at the time of sale and delivery. This is not confirmed to things which are required to maintain a bare existence but also includes articles which are reasonably necessary to the minor having regards to his station in life. Thus, apart from things like food, drinks, clothing and lodging, the term is used or is employed for articles purchased for real use, so long as they are not merely ornamental or used as matters of comfort or convenience only. A corporation also is legally capable of entering into such a contract. A company may be created by an act of parliament or under the company's Act. In the 1st instance, the contractual powers

of the corporation will be limited by the act. Under the company's act, the powers of the corporation to enter into contract are usually governed by its memorandum or articles of association. Any act that the corporation does outside this Act will be ultra vires (beyond its powers) and null and void.
Other examples of persons not possessing full capacity to contract are drunkards and mentally disordered persons.

2.8 The Reality of Consent

The roots of a completed agreement lie in consent. If there is no consensus between the parties, generally speaking there cannot be said to be a contract. Circumstances which may either be a mistake by one or both parties because the assent of the parties was obliged through misrepresentation, duress or undue influence.

i. **Mistake:** Mistake can be said to be an erroneous mental conception which influence a person to act or to omit to act. Mistakes generally may be of two types:
   a. **Mutual mistake:** Mutual mistake is one that is reciprocal and common to both parties to a contract. At common law, contracts based on this type of mistake are void only in case of Res Extincta and Res Sua. Res Extincta is where the subjected matter of the contract has ceased to exist or has been destroyed prior to the date of the agreement but that fact is unknown to the parties. Res Sua deals with mistake as to title and arises more often where a man enters into a contract believing that the subject matter of the contract is the property of the other party whereas, as a matter of fact, it is his own.
   b. **Unilateral mistake:** This is the case where the mistake of one of the contracting parties is known to the other. Ordinarily, a unilateral mistake does not affect the contract unless it is so fundamental that it can be said that there is no offer and acceptance. The majority of cases in which unilateral mistake has arisen have been cases of mistaken identity. The identity of the person with whom one is contracting or proposing to contract is often immaterial. Sometimes, however and for special reasons the identity of the person is material. In such a case there may be no contract if a mistake has been made as to this.

For example, in the case of **Cundy v. Lindsay,** a fraud called Blenkarn wrote the plaintiffs offering to buy certain goods. He so continued a signature to resemble that of Blenkron & Company a reputable firm carrying on business in the same street. The plaintiffs dispatched the goods in the belief that they were dealing with Blenkron & Company. These goods were in turn sold to the defendant who took them in good faith. The plaintiff sued the defendant for conversion. The Court held that the mistake was one as to the identity of the other contracting party and the contract was therefore void. Much more difficulties arise where the parties deal face to face i.e. where the offer and acceptance is made by the parties in each other‟s presence. In such a case, the offeror must be taken prima facia to have intended to contract because a person in front of him is the real person and to nobody else. For example, in **Phillips v. Brooks** case, another fraud called North entered the plaintiffs shop and selected several pieces of jewellery. He then wrote out a cheque for the price saying, "You see who I am, I am Sir George Bullough of St. James Square". The plaintiff had heard of Bullough and upon consulting a Directory, he found that he was living in the address given. Then he took the defendants who received it (jewellery) in good faith to court. From the fact, there are two possible conclusions. The plaintiff either intended to sell to Bullough and to nobody else.

The court **held** that the plaintiff intended to contract with the person in the shop, so the plaintiff failed in his action to recover the jewellery.

In the case of **Ingram v. Little**, the plaintiffs, three ladies, put up am advert to sell a car for £717. A swindler tries to accept this offer. His identity is doubted by the ladies and therefore became wary of the cheque the swindler offered in payment for the car. He claims to be Mr. Hutchinson of Stanstead Road, Caterham, which name the ladies found on a telephone directory on cross-checking. The cheque is accepted from him. Swindler takes the car. The cheque is dishonoured. The ladies sue Little who bought the car from the swindler for conversion.

Held: Contract is void for mistake since the swindler got no title to the car and he could not therefore pass a good title even to a purchaser in good faith. The general rule is nemo dat quod non habet – no one can give a better title than he has.

Lewis v. Avery case: A man advertises the sale of a car. A rogue requests to test the car. The latter likes the car and both went the former's financee's flat where the rogue introduced himself as Richard Greene a film actor. The rogue writes a cheque of £450 for the agreed sum but the owner of the car refuses on the ground that the cheque might be dishonoured. Where upon the rogue produced a special pass of admission to Pinewood studios bearing the name of Richard A. Greene and a photograph of the rogue claiming to be Greene. The car owner allows the rogue to take the car. The rogue sells it to a third party for £200. The cheque is dishonoured and the original owner of the car now sues the third party claiming damages for conversion.

Held: the fraud rendered the contract between the plaintiff and the rogue voidance and, accordingly, the defendant obtained good title since he bought in good faith and without notice of the fraud, the plaintiff having failed to avoid the contract in time.

ii. Misrepresentation

The actual conclusion of a contract is often preceded by negotiation between the interested parties. During a preliminary negotiation between the contracting parties various statements might be made. If the state made by the parties is intended to be acted upon, they are known as representations. But if such statement is false, it is a misrepresentation and may give rise to a liability depending on whether it is fraudulent or negligent. A misrepresentation is fraudulent when it is made knowingly without belief in its truth or recklessly careless, without it being true or false. In this context, negligence in itself cannot amount to fraud. If on the other hand no reasonable person would have believed in the truth of the statement when making it, the court would tend to assume that the belief in the statement is not honestly claimed and the statement would be treated as simply fraudulent. In the event of fraudulent misrepresentation, the innocent party may treat the contract as terminated or he can waive the effect of misrepresentation and complete the contract. He can also in either case obtained damage for decent. Negligent misrepresentation is one which is made carelessly or without reasonable grounds for believing it to be true. Apart from statute, a misrepresentation cannot be regarded as negligent unless the representor (person making the misrepresentation) owed a duty to be careful to the representee.

2.9 Illegality

An agreement though possessing the essential ingredient in the formation of a contract may nevertheless still be unenforceable because the object sought to be accomplished by the agreement is illegal. An illegal

contract is one which calls for the illegal performance of illegal act by one of the parties. A contract may be illegal because it is definitely forbidden by statute or law because it is contrary to the common law principle of public policy.

When a statute totally prohibits the making of the contract, a disregard of the statute renders the contract illegal. Statute here includes acts of parliament, presidential decrees, ministerial rules and regulations and local authority rules and regulations authorized by the constitution or the parliament to make. Such a statute may declare a contract illegal as a matter of form or illegal as to performance. And by as to a matter of form, it is meant with regard to a case of procedure being gone through for the sake of legality or convention. A contract is illegal as to formulation if its very creation is forbidden by the law. In such a case, the contract is void ab initio (from the very beginning). It's a complete nullity under which neither party can enquire right whether there is an intention to break the law or not. A contract is illegal as performed if though lawful in its formation it is performed by one of the parties in a manner prohibited by statute.

2.10 Contract Illegal because of Common Law on Ground of Public Policy

Under the common law doctrine of public policy, illegal contracts may fall into two classes according to the degree of mischief which they involve. If they violate no basic concept of morality but run counter only to social or economic expediency, they are void. But if either as formed or as performed is so inimical to the interest of the community that they offend basic conceptions of public policy, they are not only void but also illegal.

Contract treated as illegal in common law on grounds of public policy are the more reprehensive types of contract. An example of such are:

i. Contract to commit a tort, crime or fraud on a third party.
ii. Contracts that are sexually immoral
iii. Contracts that are prejudicial to the public safety
iv. Contracts that are prejudicial to the administration of justice
v. Contracts to defraud the revenue
vi. Contracts liable to corrupt public life, etc.

2.11 Discharge of Contract

The discharge of a contract occurs when the parties to the contract are free from their mutual obligation. The extent of their freedom depends however upon the mode of discharge. Discharge may be affected by the following ways.

a. Performance: A normal method of discharge is where both parties perform the obligation. In this event the contract is completely extinguished in the sense that both parties are free from further liabilities. As a general rule, the law does not regard a promisor as discharged unless he has completely and precisely performed the exact thing that he agreed to do.

b. Express Agreement: What has been created by agreement may be extinguished by agreement. This means that the parties to an existing contract can by another agreement extinguish the right and obligation that has been created by the first contract.

c. **Discharge by frustration:** Frustration is said to occur when subsequent to the making of a contract a change of circumstances renders the contract legally or physically impossible of performance. What the courts have held in such a case is that if some catastrophic events occur for which neither parties is responsible, and if the result of that event is to destroy the very basis of the contract, so that the venture to which the parties now find themselves committed is radically different from that originally contemplated, then the contract is forthwith discharged. It follows therefore that mere hardship or inconvenience to one of the parties is not sufficient to imply discharge by frustration and furthermore where the act constituting frustration has been self-induced the party at fault cannot rely on it. It is not to tabulate or classify all the circumstances to which the doctrine of frustration applies in the following situations.

i. Destruction of the subject matter**:** Where the performance of the contract has been rendered impossible by the destruction of the specific thing essential to the performance of the contract, in this case the contract will be frustrated.

For example, case of **Taylor v. Cadwell,** A has agreed to give B the use of a music hall on certain specified days for the purpose of holding concert. The hall was accidently destroyed by fire six days before the contract day. It was held that the contract was discharged.

ii. Personal incapacity**:** When the contract is for personal service, a subsequent incapacity either by ill-health, death or a call for military service or imprisonment may discharge the contract.

iii. Non-occurrence of an event**:** The doctrine of frustration applies to discharge of contract in the case of the non-occurrence of an event which was regarded as the basis of the contract. Recall the case of the coronation of a king in a hired hall or venue. The king eventually dies. Because the coronation did not take place eventually, the contract is discharged.

iv. Interference by the Government**:** This is a common cause of frustration and happens especially in time of war where for example the labour or material necessary for the performance may be requisitioned or the premises upon which work is to be done is temporarily ceased for public use. In such an event the contract is discharged.

v. Subsequent illegality**:** A subsequent change of law which renders the whole performance of a contract illegal may also serve to discharge the contract. Parliament or another authority may intervene by legislative act to affect the legal situation of the contracting parties. When such a change renders the performance of a contract illegal, the contract is discharged.

2.11.1 Effect of the Doctrine of Frustration

The position at common law is that the occurrence of the frustrating event brings the contract to an end forthwith, without more ado, that is, automatically or immediately. Frustration only discharges the contracting parties as to their future obligations under the contract. All legal discharges the contracting parties as to their future obligations under the contract. All legal right already accrued to the parties or money already paid by one party to the other before the frustrating event happens is left intact. But this principle which means that any loss arising from the termination of the contract must lie where they have fallen, might cause a hardship to one or the other of the parties.

For example, in **Chandler v. Webster** case, X agreed to let a room to Y for the purpose of viewing the coronation procession of 1902. The price was £141.15 payable immediately. Y paid £100.00 and still owed the balance when the contract was discharged owing to the abandonment of the procession. It was held that not only that Y has no right to recover to the sum of the £100.00 but also he remains liable for the £41.00

The decision in that case caused general dissatisfaction and was over-ruled by the House of Lords.

Fibrosa Case. In the Fibrosa case, the ruling or the decision of the House of Lords states in essence that money paid can be recovered when there has been a total failure of consideration. This rule in Fibrosa case thus applies only in cases of total failure of consideration. Thus, where there has been an advance payment and only in cases of total failure of consideration has occurred i.e. if the payer has received some benefits under the contract no matter how small that benefit may be, it cannot recover what he has been paid.

2.11.2 Discharge by Breach

There is a breach of contract whenever one or both parties failed to perform the obligation imposed upon them under the contract. This may occur when one of the parties expressly or impliedly repudiates or renounces the obligation in the contract or where a party by its own act or default renders his promise impossible of performance. In such a case he is not entitled to treat the contract as discharged.

2.11.3 Remedies for Breach of Contract

In public law and contract, liabilities are clear cut. The legislative provisions tell the individual precisely what he must not do. The terms of the contract that he has made define what his obligation under that contract might be. But the individual has an obligation over and above these. These obligations that are placed on him as a member of a society and through the legal systems, places obligation of civil nature upon all members, the obligation not to injure another by our actions. The law thus imposes such a civil obligation; a breach of that obligation may give rise to an action in damages by the injured parties. That action is in tort.

1.12 Law of Tort

Tort then can be described as an act or omission to act which is unauthorized by law and which infringes either on some absolute or qualified rights of another and gives rise to action for damage at the suit of the injured party. No one has yet succeeded in formulating a perfectly satisfactory definition of tort but from the above attempt, it will be seen that two distinct factors are necessary to constitute a tort. First, there must be some act or omission, must not be authorized by law and secondly, this wrongful act or omission must in some way inflict an injury, special, private and peculiar to the plaintiff as distinguished from an inquiry or the public at large.

The law of tort has a very important part in the construction industry. The tort of negligence, nuisance, trespass and strict liability rule under the doctrine laid down in Rylands v. Fletcher.

And other matters with regards to tortuous acts likely to affect person employed in the industry will constitute the subject of our discussion here.

But first we must make certain remarks concerning tortuous liabilities in general. First of all, the interests protected by the law of tort consist of both personal and proprietary interests as is a
Person's reputation or business interests, his family relationships and his rights to be free from unjustified process of law.
Secondly, as a general rule, the person who commits the tort is the one who must pay damage as a result of his action. But this is not always the case, for the law does recognize also the principle of Vicarious Liability i.e. the principle that a man can be liable for actions done by another. For the man working in the construction industry, this is of particular importance for two reasons. First, he will find that in many instances, statutes places a particular obligation upon him and he alone carries the obligation and cannot delegates the performance of his duty to anyone else. Thus if a contractor employs someone to carry away some refuse to a certain site he will remain liable for its bad disposal if the lorry driver dumps it on someone else's property.
Secondly, the principle is of importance to the firm in the realm of employment law. The rule is that an employer is to be regarded as liable for all actions of employees provided they were carried out within the scope of that employee's authority or employment.

2.12.1 Liability in Negligence

The law of negligence cuts across various topics in the law of tort. Negligence has been defined as a breach if a legal duty to take care which results in damage undesired by the defendant to the plaintiff. To found an action in negligence, three elements must be present:

- A legal duty imposed on the defendant to take care of the plaintiff. The question whether a duty exists in such a case is decided by the court and numerous categories. Of such a situation for example the maker of foils owes a duty to those who use them, a workman engaged in a skilled occupation owes a duty to his client or a customer. The man who works on the highways owes a duty to other highway users. The occupier of a property owes a duty to those who come upon his property lawfully.
- Secondly, there must be a breach and
- thirdly a consequential damage to the plaintiff which arose from the breach.

In this, and all other circumstances involving negligence, once a duty is shown to exist it will cover injury to all those persons who might foreseeably be injured by the negligent act.

2.12.2 Professional Negligence

Architects, surveyors, engineers and other professional men hold themselves out as possessing particular skills. The law expects such person to display an average amount of competence associated with the proper discharge of the duties attendant to their profession. It must be stressed that the law does not demand the highest degree of skill shown by persons in that profession. It is reasonable competence only that is expected. Qualified for some years, an Engineer may fall behind the time in the sense that he may find himself less competent than more recently qualified men. The law demands that he keeps himself reasonably up to date and so he should not obstinately carry on with the same old techniques if it has been proved to be contrary to what is really substantial to the whole of formed opinion.
An unqualified may not be regarded as negligent if he uses practices which are commonly accepted within his profession even if a large number of colleagues feel the practice or practices are not wise. The basic question of whether he is ever negligent or not lies on the objective, standard of reasonableness and

whether the care taken by the Engineer, Architect, Survey or other professional is reasonable or not will depend upon the circumstances of every particular case.

An often reliable guide is that of standard of care and foresight applied in every trade as a matter of general practice. The employee who is sued for negligence might be able to find a defence on the claim that he has followed all the standard procedures in carrying out the work and should therefore not be regarded as negligence. But this answer in itself is not always sufficient. It is open to the court to decide that, standard of practice or not, it is still a practice which does not measure up to the general status of a reasonable man.

Usually, it is necessary for the injured party to show that the defendant had been negligent. The duty of care is first established and then breach of that duty give rise to liability.

But in some cases, the burden of proof is reversed and falls on the defendant so that it is for him to prove that he was not negligent. This is in accordance with the doctrine of Res Ipsa Loquitor, (meaning the facts speak for themselves). It applies in those situations where the harm is of the kind that does not just happen on its own but was caused by something in the control of the defendant and therefore must first be regarded as having been the result of the defendant's negligence.

It will now be convenient to discuss the particular types of situation in which a person might find himself faced with the action in negligence. This might be with reference to four classes viz:

i. Liability to defence chatter: From the point of view of construction industry, liability under this head will largely arise from the methods used or tools supplied in the course of work. This situation was neatly summarized by Cotton, L. J. in the case of **Heaven v. Pender**. He said anyone who without due warning supplies to others for use an instrument or thing which to his knowledge, from his construction or otherwise, in such condition as to cause (injury) danger is liable for injury caused to others by reason of his negligent act. In that case H was employed by an employed by an independent contractor who was engaged to paint a ship. The rope supplied by the employer was defective and H was careless he did not know of the defect. The court held that the employer was liable for injuries sustained as a result of the defective rope. The whole concept of negligent behavior under the head was extended in the well-known case of **Donoghue v. Stevenson.** The effect of the judgment in that case is that it does not base the duty of care on reasonable foresight. In other words, there is a question of negligence only if it is established that the likelihood of injury to the plaintiff can reasonably be foreseen. But where injury or damage is so remote that the defendant cannot foresee that his act or omission will cause injury to the plaintiff, he will be excused.

ii. Liability under the occupiers (Occupiers Liability Act 1957): This term occupier means anyone having physical control or possession of the premises. It certainly covers building and construction sites and those using fixed or movable structures such as lifts. There may indeed be more than one occupier of the premises. For instance, the contractor will fall under the definition on a construction site and so will be the employer. Similarly, a subcontractor may be regarded as the occupier of the whole or part of the sight. The act regulates the duty of the occupier in relation to structural defects or other dangers due to the state of the premises themselves. The act states that the occupier has the common duty of care. Although, the duty is a common duty towards all visitors, special reference is made to two particular cases viz:

   a. An occupier must be prepared for children to be less careful than adults.

b. An occupier may expect that a person, in the exercise of his business, will appreciate and guide against any special risk ordinarily incident to it so far as the occupier leaves him free to do so. E.g, A mere warning of a defect or danger on the premises is not enough in itself in all circumstances particularly where that child is involved.

iii. **Liability within the employer/employees relationship:** In this relationship, there is a duty which is personal to the employer to take reasonable care for the safety of his workmen whether the employer be an individual, a firm or a company, and whether or not an employer takes the share in the conduct of the operation. The employer will thus have an obligation personal in nature towards the men that he employed on his site.

iv. **Liability for negligent mis-statement:** The tort of deceit is highly relevant in considering the law of contract, as the liability to pay damages for a fraudulent misrepresentation arises independently of contracts. The importance of this is that a person who was suffered damage as a result of a fraudulent misrepresentation made to him can sue for damage not withstanding that he is not in contractual relationship with a representer. So, a builder who suffers damage as a result of Architect's fraudulent misstatement can be sued to recover damages notwithstanding the absence of any contract between them.

Although the court has always imposed a duty to avoid making careless statements which results in harm to other person, yet it has always drawn a distinction between a careless statement that cause physical injury to the person and that which cause financial or economic loss. In the former, a duty of care exists while the court until the recent case of Hedley Bryne v. Heller consistently held that, in the latter, no duty of care existed in the absence of fiduciary or contractual relationship. It is now clear as a result of this decision that circumstances can exist

where an innocent but negligent mis-statement does give rise to a liability in damage notwithstanding the absence of any contractual relationship between the parties.

In addition to the fact that the statement is inaccurate or false it must also be established that the person making the statement was careless or negligent in making it and owed a duty to the person to whom it was made.

It would appear therefore that the duty of care exists when a party seeking information from a party seeking information from a party possessed of special skills or knowledge trusts him to exercise due care, and that he knew or ought to have known that reliance was being placed on his skill and judgement. This duty seems to extend to all professionals, Engineers, architects, etc.

A contractor who may be either an engineer or architect may also be liable to a third party because of the damage to the property of the third party as a result of his building or Engineering operation. Such liability under the rule in **Rylands v. Fletcher** or trespass to property such as land.

2.12.3 Nuisance

The essence of the tort of nuisance is that it involves an interference with the employment of land. The interference may be by water, fire, smoke, smell, gas, noise, heat, disease or any such thing which may cause such an inconvenience.

Nuisance may be public or private. A public nuisance consist of some unlawful act or omission in the discharge of some legal duty, which act or omission endanger the lives, safety, health or comfort of the public or by which the public is obstructed in the exercise of some common rights.

Public nuisance covers not only those acts or omission which interfere with the definite public rights for example obstruction of public highway but also which endanger the health, safety or comfort of the public of the public generally. So, where a sanitary authority so manage their sewage disposal as to affect the health or comfort of the public, they commit a public nuisance. So also does a person who allows rubbish or filth to be deposited on his land so as to be injurious to the inhabitants of the neighbourhood.

It is however important to note that a private person can only bring an action for damage in respect of public nuisance if he can show that he suffered some substantial damage peculiar to himself in his person or trade over and above that suffered by the public at large. Thus a person who is merely prevented from using the highway as a result of some obstruction suffers only the same damage as any other user of the highway. But if on using the highway, he suffers damage peculiar to himself and has the right of action.
A person is said to have committed a tort of private nuisance when he is held to be responsible for indirectly causing physical injury to land or substantially interfering with the use or enjoyment or an interest in land, where in the light of all the surrounding circumstances, this injury is held to be unreasonable.
The tort covers a very wide field. It covers physical injury to land by vibrations from building operation. For instance the plaintiff may have to show that the vibrations make his work impossible to be carried out or has damaged the foundation of his own building.
Occasionally, there may arise a conflict or injuries (injustice or unfairness) between neigbouring land owners. The law of nuisance has thus readjusted the respective rights of those neighbours. Thus in judging what constitutes nuisance in such a case a balance has to be maintained between the right of the occupier to do what he likes with his own property and the right of his neighbour not to be interfered with. It is impossible to give any precise or universal formula but it may broadly be said that a useful test is what reasonable according to ordinary usages of living ina society or more correctly in a particular society.
Therefore, to do something in sheer wantonness and with the proof intention (accumulated evidence on which a verdict is based) to annoy such as deliberately and continuously making noise or firing guns in the immediate neighbourhood of another‟s land is evident that the defendant is not using his property in a legitimate manner and may therefore amount to a nuisance.
The Rule in **Rylands v Fletcher**: This rule states that a person who for his own purpose brings on his land and collects and keeps there anything likely to do mischief if he escapes, must keep it at his perils and is prima facia liable for the damage which is the natural consequences of his escape. This rule takes name from the famous case of Rylands v. Fletcher, which is the leading authority in it. In that case, the defendants employed independent contractors to build a reservoir on land. Through the negligence of the contractors, disused shaft upon the site which communicated with the mine of the plaintiff beneath the neighbor's land was not locked up. Upon filling of the reservoirs, the water escaped down the shaft and flooded the mine of the plaintiff. Although, the plaintiff was not negligent, he was held liable. But certain requirements must be satisfied before the rule can apply. First, the rule applies for a person who for his

own purpose brings on his land and collects and keeps the thing in question. What matters is whether a particular thing has infact been accumulated there.

If therefore water flows from A' underground tunnel to B's mine whether by force of gravitation or by percolation, A is not liable under the rule for that escape because the water was naturally on A's land and he did nothing to accumulate it there. So the rule applies only to things artificially brought or kept upon the defendant's land.

Secondly, there must be an escape from the place where the defendant has an occupation or control over the land to a place which is outside his occupation or control.

Thirdly, damage must be proved. However, when the rule operates, the defendant may defend himself by proving consent of the plaintiff. That is, if the plaintiff has expressly or impliedly permitted the defendant to accumulate thing, the escape of which he complained of, then he cannot sue his escape.

Also, the defendant may show that the plaintiff was in one way or the other responsible too for the escape which caused the damaged.

Furthermore, where the third party over whom the defendants articulately escaped, in the absence of negligence on the part of the defendants, he is not liable for the damage resulting from the third person's action.

2.12.4 Trespass

Intentionally or negligently or remaining on or indirectly causing any physical matter to come in contact with land in the possession of another is trespass. As a result of Engineering or Building Operation, one may negligently enter or remain on or directly cause some physical matter to come into contact with the land in the possession of another. This amounts to the tort of trespass and is auctionable. This tort protects the interest of the plaintiff in having his land free from physical intrusion. In order to maintain an action of trespass, the plaintiff must be in the possession of the land. Because trespass is an injury to possession and not to little ownership. So all what the plaintiff has to prove in an action of trespass is that he is in possession of the land. He needs not prove that he actually owns the land. Furthermore, as with the other forms of trespass the immediate act must constitute a trespass he complained of. It is therefore not trespass if the evasion of the plaintiffs' land is merely consequential upon the act of the defendant.

MODULE 3
INDUSTRIAL RELATIONS

3.1 Definition

Industrial relation refers to a relationship between the employers and employees. It also refers to a field of study that examines these types of relationships, especially groups of workers in unions and their employers. The employers are represented by management and employees are represented by unions

3.2 Employment law and unionism,

Employment law is the section of laws that govern the relationship between an employee and their employer, including the rights and responsibilities of both parties. It helps to ensure that a workplace is safe and appropriate to work in, govern the time/period that an employee can work and determine the wages that an employee can receive. Included in employment law are many regulations from all levels of government. Due to how extensive employment law is, it's often divided into different areas, such as workplace safety, wages, benefits, family and medical leave, unemployment and workplace conduct.

3.2.1 Importance of Employment law

Employment law is designed to ensure that all parties in a business get treated fairly and ethically, which can help to keep a business running efficiently. If both an employer and employee understand what their rights and obligations are, they can be more prepared in certain situations, such as in a case of salary misclassification. Employment law can also help to prevent work disruptions between employees and management by setting standards to govern the workplace. Employment law can mitigate issues that may arise in the workplace as employment discrimination (based on characteristics such as race, color, religion, gender or national origin).

3.3 Unionism at Workplace

Unions are groups of workers organised together to win a better deal at work. In most workplaces where unions are active, members will get together to talk about what's going on – and any problems they are having. The issues most likely to come up are pay, pensions, safety at work, unfair treatment, or simply the way work is organised. The union members elect someone to speak for them, known as Representative. In many workplaces, the union is legally recognised by the employer. In these workplaces, the union reps have the right to formally negotiate with managers about pay and other terms and conditions.

3.3.1 Freedom to Join and Form a Union

Constitution of Nigeria provides freedom to join and form unions. Every person is entitled to assemble freely and form association with trade union or any other association for the protection of their rights, with an exception to workers of armed forces; police; customs, Immigration and the prison service and other special services. Labour law states that the contract of employment must not make it a condition of employment to join or leave the trade union. An employer must not dismiss any worker due to his association with the trade union and the activities of the union.

3.3.2 Trade union

A trade union is an organisation made up of members (a membership-based organisation) and its membership must be made up mainly of workers. One of a trade union's main aims is to protect and advance the interests of its members in the workplace. Most trade unions are independent of any

employer. Also, the purpose of trade union is to regulate the terms and conditions of employment of workers. Trade unions may not operate without being registered with the official registrar of trade unions, provided that the application of registration is supported by at least fifty members of the union. This registration must be approved by the government. Trade union may not be registered if a properly functional union is already operating in the organisation. Trade unions must also have registered rules that include provisions dealing with matters such as the union's purpose, funds, accounts, membership dues, officers and discipline. The mandatory rule is that no member of the union may take part in a strike unless all necessary options to dispute has failed to yield results and a majority of members of such union duly supported the action.

However, trade unions try to develop close working relationships with employers. This can sometimes take the form of a partnership agreement between the employer and the trade union which identifies their common interests and objectives. The objectives of trade unions are to:

i. negotiate agreements with employers on pay and conditions
ii. discuss major changes to the workplace such as large scale redundancy
iii. discuss members' concerns with employers
iv. provide members with legal and financial advice
v. provide education facilities and certain consumer benefits such as discounted insurance, etc

3.3.3 Collective Bargaining

Labour Law defines collective bargaining as the process of arriving at, or attempting to arrive at, a collective agreement. Collective agreement is an agreement in writing regarding working conditions and terms of employment concluded between one or more trade unions or other organisations of workers (or an association of such organisations). A collective agreement is interpreted by a National Industrial Court. Collective bargaining takes place when a trade dispute arises. Trade unions elect a representative to negotiate with the employer. Both parties must try to settle the dispute by any agreed dispute resolution mechanism. In absence or failure of it, parties must appoint a mediator (mutually agreed on and appointed by the parties), within seven days to settle the dispute.

If the mediator fails to settle the dispute, it is then reported to the Government. Government appoints a mediator to bring about a settlement; otherwise the Government refers it to the Industrial Arbitration Panel. The panel establishes an arbitration tribunal to make an award within twenty-one days. Government can refer back an award for reconsideration. Once the award is accepted the parties have seven days to object to the award. In case of no objection, the award is published and becomes binding in the employers and workers to whom it relates.

In case of objection, the dispute is referred to the national Industrial Court for the final decision. Equally too, the Government can refer directly to the court without going through arbitration tribunal stage.

The National Labour Advisory Council (NLAC) is the national tripartite consultative mechanism that provides consultation and co-operation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.

3.3.4 Right to Strike

Strike is the cessation of work by a body of employed persons acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to

work for an employer in consequence of a dispute, done as a means of compelling their employer, or to aid other workers in compelling their employer or any persons or, to accept or not to accept terms of employment and physical conditions of work.

No individual, trade union or employer may take part in a strike or lockout if that person, trade union or employer is engaged in the provision of essential services; the strike or lockout concerns a labour dispute that constitutes a dispute of right (rights already specified in law, collective agreement or employment contract); the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer; and a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

3.4 Terms and conditions of employment

The terms and conditions of employment relate to the requirements set out in an employee's contract, which include information on rights, responsibilities, duties, legislations, and work benefits, which must clearly and fairly set out.

Without following the right procedure, you could end up facing an employment dispute/tribunal. Where you might have to pay out compensation and have your decision reversed.

The right employment contract will depend on your company. Terms and condition for a small business will be drastically different to larger enterprises. But in the end, having the legally correct form is vital for all business owners.

3.4.1 Employment legislation

The main law which protects terms and conditions of employment come under the Employment Rights Act. The act protects employment matters such as:

i. Contract of employment
ii. Pay
iii. Dismissal and grievances.
iv. Time off.
v. Pension.
vi. Studying and training.
vii. Maternity, paternity, and flexible working.
viii. Termination of employment.

Terms and conditions of a business are often found through written contracts. But they can also be found through:

i. Written statement of employment.
ii. Verbal agreements.
iii. Offer letters.
vi. Employee handbooks/Condition of service.
vii. Business manuals.
viii. Legal regulations.
ix. Implied agreements.
x. Collective agreements.

Be cautious when using non-documented agreements, like verbal contracts, as they can easily lead to disagreements and legal issues. Employers should recognise the importance of terms and conditions through written documents. This can reduce any chances of being held liable if contract terms are written, especially when challenged with unfair claims and tribunal hearings. They can enhance clarity for your terms, as well as reduce any chances of being held liable.

Terms and conditions within legal means often concerns matters like, workplace safety, healthcare, and equal rights policies. General terms and conditions can sometimes be negotiable between employer and employee. But some might be applied across the entire business, to set a standard or keep legal compliance.

(a) Examples of job-specific terms and conditions are:

i. Job specifications and roles.

ii. Working hours and days.

iii. Exempt and non-exempt conditions.

iv. Benefits and compensations.

v. Dispute resolution processes.

(b) Examples of company-wide terms and conditions:

i. Dress code policies.

ii. Payment schedules.

iii. Basic employee benefit information (like healthcare, retirement plans, etc).

iv. Absence, holidays, leave procedures.

v. Performance and probation policies.

vi. Disciplinary procedures.

3.4.3 Change of terms and conditions of an employment contract

Employers can change terms and conditions of employment, but they must do it lawfully. Some common reasons for changing terms can be reducing salaries, changing work hours, applying promotions, etc. However, for written employment contracts, they must be agreed upon by both parties before actioning any change. Otherwise the organisation could be held liable and risk facing employment hearings and compensation penalties. This is necessary for anything with contractual force, not just the written contract. For example, if the employee handbook is contractual, changes to terms must be agreed.

MODULE 4
INTELLECTUAL PROPERTY

4.1 Definition

Usually, Intellectual Property (IP) covers products of intellectual creations, which the law ascribes the exclusive right of appropriation to the designated owners. Intellectual Property law is a body of laws that governs all the relevant aspects of intellectual property right, such as Patents, Copyrights, Trademarks, License, Royalty, Ownership, Registration, etc. In Nigeria, several laws have a bearing on the protection and administration of the different rights that make up intellectual property. However, the three main statutes governing the intellectual property law in Nigeria are the Patents and Designs Act, Copyrights Act, and the Trademarks Act. These laws govern the protection and administration of the predominant Intellectual property protected in Nigeria as follows:

4.2 Patents:

Patents law is channelled towards protecting inventions that extend to things like machines, devices, chemical compositions, and manufacturing processes. Essentially, the law protects the owner against the independent development of the patented subject matter. It is a grant from a government that confers upon an inventor the right to exclude others from making, using, selling, importing or offering an invention for sale for a fixed period. This invention may be a new product or process. The patent protects the inventor from others who may attempt to make, use, distribute or sell the invention without the patent owner's consent.

Patentable inventions are inventions in respect of which the law will grant a patent. The Patent & Designs Act Cap P2, Laws of the Federation of Nigeria, outlines conditions for an invention to be deemed patentable. According to section 1(1) of the Patent & Designs Act, an invention is considered patentable if it meets the following conditions;

i. It must be new
ii. It must be the result of an inventive step; and
iii. It must be capable of industrial application.

In Nigeria, Patents cannot be validly obtained in respect of:

(a) plant or animal varieties, or essentially biological processes for the production of plants or animals (other than microbiological processes and their products); or

(b) inventions of exploitation of which would be contrary to public order or morality

Furthermore, the provisions of section 1(3) of the Patent & Designs Act states that any publication made available to the public by oral disclosure, a document or a prior use will destroy the requirement of novelty and ultimately make an invention non-patentable. However, provided that an invention is not deemed to have been made available to the public merely because, within six months preceding the filing of a patent application in respect of the invention, the inventor or his successor in title has exhibited it in an official or officially recognised international exhibition.

Again, the rights conferred on a patentee are not automatic. They require the statutory formality of registration as provided in section 2 of the Act to bring them into effect. This is done through the office of the Registrar of Patents in the Federal Ministry of Industry, Trade and Investment. The Registrar has a

duty under the Patents & Designs Act to examine all patent applications to ensure that they conform with the provisions of the Act. However, it is essential to note that the examination here does not amount to an analysis in substance but rather form. Mainly, in making an application, it is crucial for an applicant to adequately state the specifications and claims of his invention, which he desires to protect in the patent application. The reason for this is that the specification and claims are the heart of patent law. Claims define the boundaries of the patent's property right that the patent confers. They clearly define a patent owner's property right.

Overall, once an application satisfies all the Patents & Designs Act requirements, the Registrar will grant the application without any further examination of the fact of patentability or non-patentability of the subject matter of the application. The patent grant gives an inventor monopoly rights for a limited period to make, use or apply the process or product of his inventive ingenuity. A patentee is entitled to the sole ownership and profits arising from his invention during the patent's lifetime, usually twenty years (20 years) in Nigeria.

Industrial Designs: Industrial designs are those elements incorporated into mass-produced items that tend to enhance attractiveness by their appearance. Industrial design protection covers designs that are original and novel. It is called industrial design because for it to qualify for protection, the design must be capable of application for mass or industrial reproduction. According to section 12 of the Patents & Designs Act, industrial designs are created as models or patterns to be multiplied by an industrial process and not intended to achieve a technical result, i.e. relate to or improve on the functional feature of a product without which the product cannot perform its functions. Hence, if a design relates to a functional element or enhances the functionality of a product, it will not be registrable as an industrial design and is more suitable for patent protection. The net effect of this section is that a design need not be functional nor add value to the ability or substance of the article. It suffices if all the design does is to attract attention or that it is eye-catching to influence consumers. There are two fundamental conditions an industrial design must fulfil before it can be registrable;

i. Newness

ii. Not contrary to public order or morality

iii. The right to protection of a registrable industrial design is based on the priority of registration, i.e. a party who registers first receives priority. Section 14 of the Patent & Designs Act vests the right to register the design in the statutory creator. A registered design protects the shape of the product, i.e. lines, colours or any three-dimensional form.

The idea is to prevent others from reproducing the product's exterior design for industrial use. The owner of a registered design can prevent others from copying, importing, illicitly profiting, selling or utilizing for commercial purposes by reproducing the design. In Nigeria, a registered design is protected for five years from the date of the application for the registration.

4.3 Copyright:

Copyright in an intellectual work is that exclusive right of the author of the original work to control or enable the doing of certain expressly stated acts in respect of the whole or substantial part of the work

either in its original form or in any other recognisably derived from the original form but subject to certain statutory exceptions.

Therefore, the copyright laws refer to the law that seeks to protect the rights of authors of such works that have been expressed in specific forms for the transformation or reproduction by persons who are neither authorised nor licensed by the copyright owner.

Copyright is governed by the Copyright Act Cap 68, Laws of the Federation of Nigeria, 2004. Section 1(1) (a-f) of the Copyright Act provides for works protected by copyright which include;

i. Literary works
ii. Musical works
iii. Artistic works
iv. Cinematograph films
v. Sound recordings, etc.

Overall, there are two criteria by which a work is adjudged to be eligible for copyright protection in Nigeria: originality and fixation. Thus, all copyright works must be original and expressed in a definite medium to be protected under the law. This is because copyright does not protect ideas but rather how ideas are expressed. By the provisions of section 1(2) of the Copyright Act, a literary, musical or artistic work must satisfy the twin requirements of originality and fixation.
Finally, it is crucial to note that works that satisfy the above conditions enjoy automatic copyright protection without registration or compliance with any formal rules. Nonetheless, the Nigerian Copyright Commission (NCC) provides owners of copyrights the option to deposit a copy of their works with the NCC and receive a certificate that serves as notification of the existence of the work to the general public.

4.4 Trademarks:
A Trademark is any mark, sign, or combination thereof that the owners' design to identify their product and differentiate it from other manufacturers' products, especially competitors. There is a peculiar measure of identity associated with your goods. Section 67 of the Trademarks Act Cap T3, Laws of the Federation of Nigeria 2004, defines a trademark as: A word, letter, label, numeral, colour, signature, device or any combinations of words, letters, labels, signatures that identify and distinguish the source of the goods or services of one manufacturer from those of others in the course of trade.
Trademark distinctiveness is an essential concept in the law governing trademarks and service marks. A trademark may be eligible for registration if it performs the critical trademark function indicated above and is distinctive. An essential role of any brand is to point the consumer to the origin of the marked goods and services; to do this, a trademark must distinguish the said goods or be capable of doing so.

Distinctiveness is critical for a trademark's registration. Distinctiveness connotes uniqueness, speciality, peculiarity and a distinguishable feature of a particular mark from another. Distinctiveness impacts everything from the registrability of a mark to its scope of protection, enforceability and continuing validity once registered. Trademark distinctiveness is essential when assessing how strong the trademark protection is against other competitors who may try to use trademarks as an instrument of deception,

misdirection or deceit on the buyers or consumers of goods. Notwithstanding, one must note that distinctiveness is not an automatic pass for registration as the Registrar of Trademark has the discretion to refuse, albeit in line with the Trademarks Act. The Act provides that a mark can be rejected for being deceptive, scandalous, contrary to public policy.

4.5 Technology Transfer Issues

International technology transfer is the process by which a technology, expertise, know-how or facilities developed by one business organization is transferred to another business organization. There are many issues associated with the international technology transfer. The most important international technology transfer issues are; ways of technology acquisition, choice of technology, terms of technology transfer, and creating local capability.

4.5.1 Modes of Technology Acquisition

One of the major issues in technology transfer relates to the mode of acquisition. Developing new technology may conjure up visions of scientists and product developers working in Research & Development (R&D) laboratories. In reality, new technology comes from many different sources, including suppliers, manufactures, users, other industries, universities, government, etc. While every source needs to be explored, each firm has specific sources for most of the new technologies. The problems encountered in transfer of technology are:

i. A limited general understanding of the concept of technology, and the lack of a consistent framework for its study.
ii. Lack of systematic planning for technology transfer in developing countries or misunderstanding of its underlying philosophy.
iii. Lack of bilateral scientific/ technology advantages in the process of technology transfer (mutual benefits).
iv. Lack of systematic and integrated engineering and socio-economic approach to the technology transfer process.
v. Lack of a relevant quantitative framework/approach to the analysis and evaluation of technology transfer to developing countries.

MODULE 5
SAFETY AND ENVIRONMENTAL LAW

5.1 Definition

Health and Safety Law means law or requirement of any applicable Governmental Authority, and applicable common law, relating to the protection of the health or safety of any person including employees or persons performing activities on the behalf of the Company or any of its subsidiaries. it means all laws regulating health and safety in the workplace, including but not limited to, laws governing compensation for injuries sustained and illnesses suffered in the course and scope of employment.

Environmental law stands for all legal rules that are aimed at the protection and development of the environment and its compartments as well as the protection of public health from harm, risks, and nuisances arising from the environment and the human-made interaction with the environment.

5.2 Environmental Legislation/Regulatory Framework & Authorities

The key pieces of environmental legislation and their functions are the following:-

i. National Environmental Standards Regulations and Enforcement Agency (Establishment) Act 2007 (NESREAA). NESREA, is the major federal body responsible for protecting Nigeria's environment. Its responsible for enforcing all environmental laws, regulations, guidelines, and standards. This includes enforcing environmental conventions, treaties and protocols to which Nigeria is a signatory.

ii. Environmental Impact Assessment Act (Cap E12 LFN 2004). This law sets out the general principles, procedures and methods of environmental impact assessment in various sectors.

iii. Harmful Waste (Special Criminal Provisions etc) Act (Cap H1 LFN 2004). This law prohibits the carrying, depositing and dumping of harmful waste on land and in territorial waters.

iv. Endangered Species (Control of International Trade and Traffic) Act (Cap E9 LFN 2004).This provides for the conservation and management of wildlife and the protection of endangered species, as required under certain international treaties.

v. National Oil Spill, Detection and Response Agency Act 2006 (NOSDRA). The objective of this law is to put in place machinery for the co-ordination and implementation of the National Oil Spill Contingency Plan for Nigeria to ensure safe, timely, effective and appropriate response to major or disastrous oil pollution.

vi. National Park Services Act (Cap N65 LFN 2004).This makes provision for the conservation and protection of natural resources and plants in national parks.

vii. Nigerian Minerals and Mining Act 2007.This is for the purpose of regulating the exploration of solid minerals, among other purposes.

viii. Water Resources Act (Cap W2 LFN 2004). This aims at promoting the optimum development, use and protection of water resources.

ix. Hydrocarbon Oil Refineries Act: The Act is concerned with the licensing and control of refining activities.

x. Associated Gas re-injection Act: This law deals with gas flaring activities by oil and gas companies. Prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria and stipulates the penalty for breach of permit conditions.

xi. Nuclear Safety and Radiation Protection Act: The Act regulates the use of radioactive substances and equipment emitting and generating ionising radiation. In particular, it enables the making of regulations for protecting the environment from the harmful effects of ionising radiation.
xii. Oil in Navigable Waters Act: This is concerned with the discharge of oil from ships. It prohibits the discharge of oil from ships into territorial waters or shorelines.
Regulatory authorities
The National regulatory bodies include:
i. National Environmental Standards and Regulations Enforcement Agency (NESREA).
ii. National Oil Spill Detection and Response Agency.
iii. Federal Ministry of Environment.
iv. Directorate of Petroleum Resources (DPR).
v. Nigerian Nuclear Regulatory Authority.
vi. Federal Ministry of Water Resources
vii. National Oil spill Detection and Response Agency (NOSDRA)
viii. National Biosafety Management Agency
ix. Department of Climate Change
x. Energy Commission of Nigeria
xi. Drought and Desertification Agency, etc.
Each of the 36 states has its own environmental protection bodies. For example, the Lagos State Environmental Protection Agency (LASEPA) law authorises officers to search and seize offending items and to arrest offenders. Offences under the LASEPA law include: Discharge of raw untreated human waste into any public drain, gorge, or any land. Discharge of any form of oil, grease, spent oil including trade waste from manufacturing into any public drain, watercourse, gorge or road verge. Similar provisions are contained in the Akwa Ibom State Environmental Protection and Waste Management Act (EPWMA) which empowers inspectors to inspect premises and take samples of waste generated there. The EPWMA also requires any person who commits an offence under the Act to be brought before the Environmental Sanitation Court which can try offending individuals or organisations.
Offences under the EPWMA include: Burying or dumping expired drugs or chemicals without a permit. Using pesticides, herbicides, insecticides or other chemicals to kill fish or any other aquatic life in rivers, lakes and streams

5.3 Technology Impact Assessment

Technology impact assessment (TIA) is a scientific, interactive, and communicative process that aims to contribute to the formation of public and governmental opinion on societal aspects of science and technology. This is a means of assessing and rating the new technology from the time when it was first developed to the time when it is potentially accepted by the public and authorities for further use. In essence, TA could be defined as a form of policy research that examines short- and long term consequences (for example, societal, economic, ethical, legal) of the application of technology. And the impact of this technology to worker and staff, users and public.

MODULE 6
LAW SUITS

6.1 Definition

A lawsuit is a proceeding by one or more parties (the plaintiff or claimant) against one or more parties (the defendant) in a civil court of law. A proceeding is legal action taken against someone. Hence, the term "law suit" is used with respect to a civil action brought by a plaintiff (a party who claims to have incurred loss as a result of a defendant's actions) who requests a legal remedy or equitable remedy from a court. The defendant is required to respond to the plaintiff's complaint or else risk default judgment. If the plaintiff is successful, judgment is entered in favor of the defendant. A variety of court orders may be issued in connection with or as part of the judgment to enforce a right, award damages or restitution, or impose a temporary or permanent injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes.

A lawsuit may involve resolution of disputes involving issues of private law between individuals, business entities or non-profit organizations. A lawsuit may also involve issues of public law in the sense that the state is treated as if it were a private party in a civil case, either as a plaintiff with a civil cause of action to enforce certain laws, or as a defendant in actions contesting the legality of the state's laws or seeking monetary damages for injuries caused by agents of the state. Conducting a civil action is called litigation. The plaintiffs and defendants are called litigants and the attorneys representing them are called litigators. The term litigation may also refer to the conducting of criminal actions.

6.1 Engineer as a witness

An engineering expert witness is a professional engineer who specializes in providing an expert opinion to clients. This person often has clients ranging from law firms to insurance companies. Most experts take on a neutral role when it comes to clients and can work for plaintiffs or defendants.

Some of the incidents that an engineering expert witness investigates for clients include train and automotive engineering defects as well as construction equipment accidents. The engineer may also get requests to review workplace accidents and industrial machinery injuries. One common accident that insurance companies retain these experts for is to figure out liability in slip and fall injuries involving sidewalks, stairs and escalators. When the engineer expert witness meets with a client, the expert will review the facts of the case and any documentation that may be available. The expert will discuss the incident with the client and tell the client his initial opinion and strategy. At this meeting, the expert will also provide a list of his fees and services that he has available to investigate the case. Services that an engineering expert witness can provide include determining the cause of an accident and providing a failure analysis report. Other options that an engineer expert has include creating engineering models and preparing simulations of accidents such as train or vehicle accidents. Sometimes a case may involve a dispute over a warranty on a defective product so the engineer will take a video testing the product and highlight any problems that may occur. Engineers also go to warehouses to inspect buildings, check the building codes and photograph industrial hazards.

An engineering expert witness often gives expert testimony in a court of law. Most experts are willing to testify in court about their findings and assist in trial preparation. The expert will have to submit exhibits such as photographs, videos and written reports. There are different roles the engineer could play in litigation such as expert witness, expert consultant and third-party engineer.