

NATIONAL OPEN UNIVERSITY OF NIGERIA

# LAW 231



Labour Law 1  
Module 1

# **LAW 231 (Labour Law I)**

## **Module 1**

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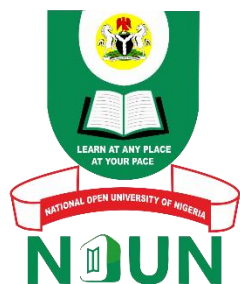
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## Unit I History and Sources of Nigerian Labour Law

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### 1.0 Introduction

This unit is to introduce you to the history and sources of Nigeria labour law. The basic context of labour law will be examined to know its nature.

One of the effects of the Europeans coming into this part of the world was the introduction of wage-earning employment. In the course of time it was discovered that it was absolutely necessary to safeguard the interest of both the employer and the employee, hence the introduction of the various means of regulating employer-employee relationship. Initially, it was thought that the employees were being made objects of servitude but in the long run it became apparent that this sort of relationship requires the incorporation of rules to avoid either party being cheated out rightly. Labour law which was fashioned to ameliorate the prevalent crisis engulfing the industry in England at a time was adopted in Nigeria as a direct consequence of colonialism by the United Kingdom.

However, as time went on, other very germane laws which regulated employment relationship and the relationship of trade unions and their members on the one hand, and the relationship with the employers such as the Trade Unions Act and the Trade Disputes Action the other, emanated. Some of these pieces of legislation will be fully examined in this course.

Succinctly put, labour law which is the law of the relationship between the employer and the employee in Nigeria was developed from several sources which will be adequately dealt with in this unit.

### 2.0 Objectives

At the end of this unit, you should be able to:

- identify the various sources of Nigeria labour law
- discuss the history of labour law in Nigeria
- discuss the whole essence of labour law in Nigeria
- determine factors of a master/servant relationship
- Identify various statutes on labour law in Nigeria.

### 3.0 Main Content

#### 3.1 History and Sources of Labour Law in Nigeria

The history and sources of Nigerian labour law may be divided into legal and extra-legal sources. Extra-legal sources, in contradistinction to the legal sources are those created by the voluntary conduct of the parties.

The legal sources of Nigeria labour law are:

- The Nigerian constitution
- Nigeria's statutes
- The received English law, comprising:
  - the common law
  - the doctrines of equity, and
  - statutes of general applications in force in England on January 1, 1990.
- Nigerian case law i.e. decisions of Nigerian courts relevant to labour law.

The extra-legal sources, on the other hand, include:

- Collective agreements
- Workplace notices and documents e.g. rule books and handbooks
- Custom and practices.

### **Self-Assessment Exercise**

1. What are the major sources of Nigeria labour law?
2. What are the differences if any, between the legal and extra-legal sources of Nigeria labour law?

## **3.2 History of labour law in Nigeria**

Labour law in Nigeria is generally defined as that branch of the country's law which regulates industrial relations. In essence, labour laws are meant to guarantee peace and harmony in the industry so as to increase productivity and profits.

Our labour laws are largely a reflection of our colonial heritage. By virtue of this, many principles of British labour law featured prominently in our labour statutes.

The main characteristics of the incursion of the colonial masters were the introduction of labour laws and policies which seemed largely designed to facilitate the commercial and economic objectives and interests of the colonial masters. Thus, in spite of the fact that Britain proudly claimed to observe the Bill of Rights and the rule of law, labour leaders were targets of repression and oppression for no other justifiable reason than that they had the effrontery to demand for their rights.

In 1861, Lagos was ceded to the British Crown and in 1862 it was made a colony or settlement as it was sometimes called. By virtue of the Supreme Court Ordinance 1876, English common law, doctrines of equity and statutes of general application were received into Nigerian legal system and by extension, Nigerian law.

Notwithstanding that the offence of criminal conspiracy as it affected trade unions had been abolished in England by the Conspiracy and Protection of Property Act as far back as 1875, Nigerian workers did not enjoy such protection until 1939 when the Trade Union Ordinance was enacted.

Apart from statutes and laws regulating employment, common law has played and continues to play an important if not dominant role in regulating the relationship of master and servant or, as it is known in modern times, employer and employee.

The courts have by themselves also developed rules which have become permanent features of the contract of employment. By these rules, certain obligations and rights are implied into contracts of employment in order to give such contract the required and necessary business efficacy.

According to the eminent Professor of Law, Professor Uvieghara, Nigeria judges provide the vehicle by which the received English common law is brought into Nigerian law with binding effects. The learned author cited the Supreme Court judgement in *Ezeani V Njidi* (1965) N.M.L.R.95 as an example of the distinctive character which the Nigeria judicial decisions are taken on in the light of the prevailing unfavourable local circumstances.

Labour law in Nigeria has come to stay and had grown considerably well after its first introduction following the cession of Lagos to the British crown in 1861 and has enjoyed a high level of judicial activism up to date. It is now part and parcel of our laws with up to date legislations which take care of as they emerge.

### Self-Assessment Exercise

1. Trace the history of labour law in Nigeria from 1861 to date.
2. Highlight the various sources of Nigeria labour law.

### 3.3 Purpose of Labour Law

One of the major purposes of labour law is to regulate the relationship between an employer and an employee. By this, the common law and statute have established that an employer is under an obligation to ensure the safety and security of his employee.

Therefore, it is now recognized that an employer owes a duty to each employee to take such action as the nature of the work and circumstance of the employee demand so that the employee is reasonably safe at his place of work.

An often quoted statement of this important duty of the employer is that of Lord Wright in *Wilson and Clyde Coal Co. Ltd V English* (1938) AC 57 at 80 where he said that:

... the whole course of authority consistently recognizes a duty which rests on the employer and which is personal to the employer to take reasonable care for the safety of his workman, whether the employer is an individual, a firm or a company, and whether or not the employer takes any share in the conduct of the operations.

Therefore, the primary purpose of labour law is that it imposes direct liability on the employer and is separate from the Master's vicarious liability for negligence of his servants. This is a duty imposed on the master and recognised by the common law. It is popularly referred to as the 'Duty of Care' but is subject to certain limitations as it is open to defenses of *volenti non fit injuria* and contributory negligence. This duty is now statutorily under the Factories Act and other statutes designed for the safety of workers.

### **Self-Assessment Exercise**

What are the significance, relevance and purpose of labour law to an employee?

## **3.4 The Scope of Labour Law**

To understand the major scope of labour law, one has to look at the likely and probable legal consequences which may follow it in a situation where there is a breach of any of the obligations imputed on either the employer or the employee. A typical example of the scenario being examined is wrongful dismissal of an employee by the employer without recourse to the regulations and guidelines of the company. This under the law is a typical example of wrongful dismissal. This will automatically give rise to a civil proceeding at the instance of the wrongfully dismissed employee.

On the other hand where an employee who is under an obligation to give adequate and substantial notice to his employers before quitting such job abandons his employers without recourse to the conditions of his employment, he will be the defendant at the suit of the company/employers for damages caused as a result of his unprofessional attitude to work without recourse to the regulations and conditions of his employment.

### **Self-Assessment Exercise**

How can you determine who is wrong when a clause in the regulation governing the employment of an employee is breached?

## **4.0 Conclusion**

This unit has afforded you the opportunity to know the history and sources of Nigeria labour law. It has also exposed to you the purpose and scope at the subject. It therefore implies that the relationship of an employer vis-à-vis an employee could arise due to the nature of the transaction between them.

## **5.0 Summary**

This unit has revealed the fact that:

- Nigeria labour law developed from English common law.
- The sources of Nigeria labour law also emanated from two major sources, namely, legal and extra-legal sources.

### **Legal sources**

- The Nigerian constitution
- Nigerian legislations
- The received English law comprising of the common law, the doctrines of equity and statutes of general application in force in England on January 1, 1990.

- Nigeria case law, i.e. decisions of Nigeria courts relevant to labour law.

#### **Extra-legal sources**

- Collective agreements
- Workplace notices and documents: e.g. rule books and handbooks
- Custom and practice.

## **6.0 Self-Assessment Exercise**

Discuss on the historical antecedent of the Nigerian labour law.

## **7.0 References/Further Reading**

Adeogun, A. A. (1969). "The Legal Framework of Industrial Relations in Nigeria." *Nigeria Law Journal*, Vol. 3.

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Nwazuo, A.N. (2001). *Introduction to Nigeria Labour Law*. (1st ed.). Ago-Iwoye: Department of Public Law & Jurisprudence, Faculty of Law, Olabisi Onabanjo University.

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The 1999 Constitution of the Federal Republic of Nigeria.



## Unit 2 the Contract of Employment

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### 1.0 Introduction

The contract of employment is the central element in the structure of labour law. At common law, the assumption is that the terms of the contract are freely established by parties who are equal. Contract of Employment, otherwise called, contract of service, like all other contracts, is governed by the general law of contract.

Therefore, all the essential features which characterize ordinary contracts must be present in a contract of employment before it can be a valid contract of service.

The major object of a contract of employment is to put in a written form the regulatory guidelines for the relationship between the employer and the employee. This unit is also meant to emphasize for you the importance of a contract of employment in any master/servant relationship.

### 2.0 Objectives

At the end of this unit, you should be able to:

- define what a contract of employment is
- highlight the importance of a written contract of employment in a master/servant relationship
- explain the importance of the necessity for a contract of employment in any master/servant relationship
- identify the basic consequences/liabilities of the failure of either party to the contract of employment.

### 3.0 Main Content

#### 3.1 What is a Contract of Employment?

As in every form of contract, the contract of employment is the central element in the structure of labour law. One could succinctly say that a contract of employment is that written document that governs the relationship between an employer and an employee. This will generally presuppose that there is someone who is in dire need of labour and another who is in dire need of wages.

#### 3.2 Nature and Basic Elements of Contract of Employment

As stated in the introductory part of this unit, a contract of employment, like all other contracts, is governed by the general law of contract. Therefore, all the essential features which characterize ordinary contracts must be present in a contract of employment before it can be said to be a valid contract of service.

A contract of employment may be under seal, oral, in writing or inferred from the conduct of the parties thereto. The essential elements required for the validity of contracts are:

- offer
- acceptance
- consideration
- intention to create legal relations
- capacity to contract
- certainty, and
- legality.

### 3.2.1 Offer

The offer is an expression of willingness to contract made with the intention (actual or apparent) that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. It may also be express or by conduct.

In *AGOMO V GUINNESS (NIG) LTD (1995)2 N.W.L.R (PT380) P.672at 675*, the Supreme Court defined an “offer” as

A proposition put by one party (the offeror) to another in dire need of a means of survival in terms of a gainful employment.

When these two meet, and there is a consensus as to the terms and conditions of service to be rendered by the employee for a fee, salary or wages mutually agreed by both parties, then it is said that a master/servant relationship exists between them. Therefore, the said employee becomes subservient to the dictates of the employer who is otherwise regarded as the master.

In labour law however, there is a clear distinction between servants who are subject to the whims and caprices of their masters who chose, directs, monitors and controls the servant in respect of the jobs to be performed by the servant. The master dictates what to do and what not to do. In such a situation, the contract of employment is said to be a contract to service.

On the other hand, where the employer chooses, directs, monitors and controls the type of job to be performed for the master, such contract of employer is categorised as a contract of service. The employees in this category include professionals such as lawyers, doctors, architects, nurses, engineers and so on. This distinction shall be dealt with at the appropriate unit in this course.

### 3.2.2 Acceptance

While an offer is an expression of willingness to contract, an acceptance on the other hand is a final and unqualified expression of assent to the terms of an offer. In *Lawal V U.B.N. Plc (1995) 2NWLR (pt. 378) 407 at 409* the Supreme Court defined acceptance as an unqualified assent to the terms of an offer. The Court further stated that for acceptance of an offer to constitute an agreement the acceptance must be made while the offer still subsisted, and

was known to the offeree, and must be communicated to the offeror, or the requisite act required by the offeror must have been done.

One could safely conclude that expression of interest to an offer clearly indicates an interest to accept the terms and condition of such an offer.

### 3.2.3 Consideration

Usually, consideration takes the form of promises exchanged by the contractual parties, or the duty undertaken by one party on account of the promises of the other. In the famous English case of *CURRIE V MISA (1875) L.R.10 Exch. 153 at 162*, LUSH J. made a classical definition of the term consideration as follows:

A valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other. Thus consideration does not only consist of profit by one party but also exists where the other party abandons some legal right in the present, or limits his legal freedom of action in the future as an inducement for the promises of the first.

In a contract of employment, the consideration for work is wages and the consideration for wages is work.

### 3.2.4 Intention to Create Legal Relations

The question is, “did the parties intend that legal consequences should flow from their agreement?” If the answer is negative, there is no contract, while a positive answer will yield a contract.

In answering this question, the law presumes that social or domestic agreements are not contracts.

There is, however, a strong presumption that commercial agreements are legally binding because the parties usually intend that their agreements should be enforceable. However, these presumptions are rebuttable.

Therefore, once the above elements are present, a contract exists, provided, however, that it is not rendered wholly or partly ineffective on account of some defects when it was formed.

These elements include:

- Illegality
- Lack of capacity to contract
- Misrepresentation
- Mistake
- Duress, and undue influence.

Where any of these elements exists, the whole essence of the contract will be negated and the contract declared null and void *ab initio*.

### 3.2.5 Capacity to Contract

This head forms part of the basic elements that may vitiate a contract of employment to create legal relation. It is worthy to mention that it is also a basic requirement for a valid contract. The general rule was stated by SIR GEORGE JESSEL in *PRINTING AND NUMERICAL REGISTERING CO. V. SAMPSON* (1875) L.R. 19 E q. 462 at 465 as follows:

Men of full age and competence understanding shall have the utmost liberty of contracting and their contracts, when entered into freely and voluntarily shall be sacred and shall be enforced by courts of justice.

The simple interpretation of the foregoing is that apart from men and women of full age, infants, insane and drunken persons generally lack contractual competence.

### 3.2.6 Certainty

For a contract of service to be valid it must be certain in its terms. The parties must be certain or must be capable of being reasonably identified, the subject matter must be certain and all essential terms must equally be certain.

### 3.2.7 Legality

The proposed contract must be legal in its object and manner of performance. As an example, a contract which involves the commission of crime e.g. smuggling or the employment of people for the purpose of sexual immorality will be null and void. So also is a contract intended to defraud tax authorities, say by understating the salary so as to pay less tax.

### Self-Assessment Exercise

1. What are the basic elements for a valid contract of employment?
2. What are the distinctive features, if any, between certainty of contract and legality of contract?

## 3.3 The Applicable Statutes to Contract of Employment

The Labour Act Cap 198, Laws of the Federation of Nigeria, 1990 is the only Nigeria statute which makes provisions on minimum terms which certain employment contracts must have. The parties to the contracts of employment covered by the act can agree on terms better than those of the Act.

However, it is not a disputable fact that where a contract of employment is covered by the act, in the absence of contrary terms agreed by the parties, the terms provided by the act will form part of their contract. These terms will include the following.

- Period of notice – section 11(1) Labour Act
- Provision of transport – section 14(1) Labour Act
- Duty to provide work – section 17 Labour Act
- Annual holiday with pay – section 18(1) Labour Act.

In the same vein by virtue of section 2(3) of the Trade Disputes Act, Cap 423 and 18(3) of the Wages Board and Industrial Councils Act, Cap 466, terms of collective agreements, to which those sections relate, become part of the contracts of employment of employees concerned, once the minister of labour makes an order to that effect.

### Self-Assessment Exercise

1. Examine the basis of regulatory statutes in respect of labour law in Nigeria.
2. What is the effect of the trade dispute and wages board and industrial council's acts on contract of employment in Nigeria?

### 3.4The Terms of a Contract of Employment

By virtue of section 91 of the Labour Act, Cap 198, Laws of the Federation of Nigeria, a contract of employment means any agreement, whether oral, written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker.

By the foregoing, it is clear that contractual terms consist of express and implied terms.

Express terms comprise those orally agreed or reduced to writing. Section 7 of the Labour Act makes it mandatory for an employer, not later than three months after the commencement of a worker's employment, to take the particulars of the employer, place and date of commencement of the engagement, the nature of the employment, duration of the contract, method of termination of contract, wages and the period of payment, hours of work, holidays, holiday pay and sick pay.

Implied terms are those which the contractual parties have not expressed or made but which may yet form a part of their contract. Sources of implied terms include:

- Common law
- Collective agreements
- Workplace notices and documents
- Customs and practices
- Terms imposed or assumed by the courts
- Statutes.

See: *Olatunde V Obafemi Awolowo University (1998) 4 S.C.Asrta Industries Nigeria Ltd V N.B.C.I. (1998) 3 S.C. 98.*

### Self-Assessment Exercise

1. What are the effects of terms of contract in a contract of employment?
2. Distinguish between express and implied terms in a contract of employment.
3. Highlight the various terms implied by a contract of employment.

## 4.0 Conclusion

This unit has revealed the basic concepts in a Contract of Employment in terms of the nature and basic elements, the applicable statutes and the various terms of the contract.

The concept of contract of employment as discussed above took into cognisance the peculiar nature of the Nigerian situation under the various legislations in respect thereto.

## 5.0 Summary

This unit has revealed the following facts:

1. Definition of contract of employment both under the common law and under the Nigeria statutes regulating thereto.
2. The nature of a contract of employment and the basic requirements needed for a valid employment contract.
3. A discussion of the relevant statutes.
4. The distinctive features between the terms of contract.
5. Where a contract of employment exists, it is necessary to put in place all the necessary machineries that will make it workable and compensatory to the adverse party in time of breach.

## 6.0 Self-Assessment Exercise

1. Examine the basic features of a contract of employment.
2. What is the effect of the enabling statutes in a contract of employment situation?

## 7.0 References/Further Reading

Factories Act (1990). CAP 126, *Laws of the Federation of Nigeria*.

Labour Act (1990). CAP 198, *Laws of the Federation of Nigeria*.

Nwazuke, A.N. (2001). *Introduction to Nigeria Labour Law*. (1st ed.). Ago-Iwoye: Department of Public Law & Jurisprudence, Faculty of Law, Olabisi Onabanjo University.

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

## Unit 3 Who Is an Employee?

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### 1.0 Introduction

According to the definition provided by the labour act, a 'worker' means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed, implied or oral, written, and whether it is a contract personally to execute any work or labour.

The foregoing also includes all other sorts of contract which shall be examined at the appropriate portion in this course. However, the issue at hand is to reveal to you who a worker or an employee is in relation to a contract of employment under the Nigerian labour law as established over the years.

An employee may either be engaged in the private or public sector of the economy which forms the nucleus of the Nigerian economy. The most paramount fact here is that the employee is gainfully employed and could conveniently cater for his family's immediate and remote needs.

### 2.0 Objectives

At the end of this unit, you should be able to:

- determine who an employee is in relation to a contract of employment
- state the determinant factors in the determination of the status of an employee under a contract of employment
- reveal and examine the basic distinctive features between the various determinant tests of whom an employee is
- distinguish between an employee, a worker and a workman.

### 3.0 Main Content

#### 3.1 Who is an Employee?

The contract of employment deals with the relationship between an employer and an employee. This contract, which is also called a contract of services, is markedly different from a contract for services, under which an independent contractor is engaged. The contract of employment is the basis of labour law, and for the following reasons, the courts have had to distinguish between employees and independent contractors.

1. At common law, an employer is vicariously liable for the civil wrongs (torts) of his employees but not generally, for those of independent contractors.
2. Although an employer owes, at common law and under statute, a general duty of care to lawful visitors to his premises, he owes his employees, at common law, a personal duty of care, that is, a duty to take reasonable care for the safety of his employees in the course of their employment.

3. Income tax is deducted by employers under the PAYE (Pay As You Earn) system, from the wages or salary of employees, independent contractors or self-employed persons pay their tax under a different method.
4. Statutes such as the Labour Act, Cap 198, the Workmen's Compensation Act, Cap 470, afford legislative protection to certain class of employees, which do not apply to independent contractors.
5. The implied rights and duties of a contract of employment do not apply to contract for services.
6. Under the Companies and Allied Matters Act, Cap 59, Laws of the Federation of Nigeria, 1990, section 494 provides that employees have certain preferential rights over other creditors of the employer in the event of bankruptcy and winding up of companies.

An employee therefore is that person who is employed by another, the employer, who determines his wages, salary, time of work and the kind of work to be done in an organisation.

See: *NIGERIAN PORTS PLC V. OSINUGA* (2001) FWLR (PT 55) 514 C.A.

### **Self-Assessment Exercise**

Who is an employee?

## **3.2 Contract of Service and Contract for Service**

It has always been the opinion of several legal writers that it is essential to remember that the protection offered by the labour statutes is only for those under a contract of service, commonly referred to as "employees" and not those under a contract for service – often described as "independent contractors or self-employed persons". This distinction is more than a question of mere semantics. In order to determine whether a person is a servant or an independent contractor, various tests have been applied.

See: *NWANA V F.C.D.A.* (2004) 6-7 S.C. 136.

### **3.2.1 The control test**

The usual view is that the sole determinant of whether a contract of service exists between "A" and "B" was the extent or degree of control which "B" was entitled to exercise over "A", in the latter's performance of his contractual obligations.

Thus in *COLLINS V HERTS COUNTY COUNCIL* (1947) K.B. 598 at 615, HILBERY J.said:

The distinction between a contract for services and a contract of service can be summarised in this way; in the one case, the master can order or require what is to be done, while in the other case he cannot only order or require what is to be done but how it shall be done.

In other words, a person is an independent contractor if the employer can only tell him what he wants him to do but not how he should do it.



On the other hand, a person is an employee if the employer tells him not only what he should do but how he should do it.

The contract of service, or the test of control, had four indices, namely:

1. The employer's power of selection of his employees
2. The payment of wages or other remuneration
3. The employer's right to control the method of doing the work, and
4. The employer's right of suspension and dismissal.

However, it has been said that that control can no longer be the decisive factor in determining whether a person is an employee because it is now clear beyond question, especially, when dealing with a professional or a person with some particular skill and experience, e.g. lawyers, doctors, engineers, etc.

### 3.2.2 The integration or organization test

If control is not a decisive test, what other considerations are relevant? In 1952, Denning L.J. (as he then was) propounded what became known as the "Organization" or integration testing the case of *STEVENSON, JORDAN & HARRISON LTD V MACDONALD & EVANS (1952)* 1 T.L.R. 101. He said:

It is often easy to recognize a contract of service when you see it, but difficult to say wherein the distinction lies. A ship master, a chauffeur and a reporter on the staff of a newspaper are all employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of a business, and his work is done as an integral part of the business; whereas under a contract for services, his work, although done for the business, is not integrated into it but only assessor to it.

The integration test has been found to be of assistance in overcoming some of the difficulties posed by the control test in the area of greater specialization of labour.

However, its usefulness is that a person is most likely to be held to be an employee if he is on the staff of an employer as Denning L.J. and other Lord Justices held in *CASSIDY V MINISTER OF HEALTH (1951)* 2 K.B. 343. In that case, the authorities of a hospital were held vicariously liable for the post-operative negligence of their doctors, even though they could not exercise any real control over how the doctors did their work.

However, as Professor Khan Freund has observed, the concept of organisation entails the right of the employer to make rules governing the running of his enterprises. Thus, even though an employer may not regulate the manner of doing the work, a person may be an employee if he is subject to the rules governing the "where" and "when" of doing the work.

### 3.2.3 The 'multiple' test

It is now recognized that no single test, control or integration, will suffice in all circumstances to determine who an employee is, and thus, distinguish him from an independent contractor. A movement towards what is called the "multiple" test is traceable

to a passage in the judgement of Lord Wright in *MONTREAL V MONTREAL LOCOMOTIVE WORKS LTD (1947) I.D.L.R. 161* where he said:

It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving (1) Control (2) Ownership of tools; (3) Chance of profit; (4) risk of loss .... In many cases the question can only be settled by examining the whole elements which constitute the relationship between the parties. In this way it is in some cases possible to decide the issue by raising as the crucial question whose business is it, or, in other words, by asking whether the party is carrying on the business in the sense of carrying it on for himself or on his own behalf and not merely for a superior.

The fundamental question which the multiple tests seek to answer is the person who has been engaged to perform those services performing them as a person in business on his own account? If the answer to that question is “yes” then the contract is for services. Otherwise, the contract is contract of service.

Other factors which the courts have considered as having some bearing on the nature of the relationship are:

1. Payment of wages and salaries
2. Ownership of the equipment
3. Personal obligation to work
4. Hours of work
5. Place of work
6. Exclusive service.

See: *IFETA V SHELL (2006) 4 S.C. (PT. 1) 136*.

### Self-Assessment Exercise

1. What are the distinctive features of a contract of service and a contract for service?
2. Examine the following (1) The control test (2) The integration or organization test and (3) The multiple test.
3. Highlight the differences in these tests.

### 3.3 Employee, Worker and Workman

The terms worker and workman have been used by some Nigerian statutes, rather than the generic concept of employee for purposes of granting protection to certain categories of employees. These statutory terms, therefore, have restrictive meanings.

The common law concept of employee or servant, on the other hand, encompasses these restrictive statutory definitions of workers and workman.

See the following statutes:

- The workman’s compensation Act, Cap 470 LFN 1990
- Sec. 91 of the Labour Act
- Sec. 27(1) of the Wages Boards and Industrial Councils Act, Cap 466 LFN 1990.

- Sec. 47(1) of the Trade Disputes Act, Cap. 432 LFN 1990
- Sec. 52 of the Trade Unions Act, Cap 437 LFN 1990

Note: In (ii) – (v) respectively, the worker and employee were used interchangeably within the contexts of trade dispute and trade unionism.

### **Self-Assessment Exercise**

What is the relationship between the terms worker, workman and employee?

## **4.0 Conclusion**

This unit has exposed you to the true meaning of who an employee is vis-à-vis the terms of his contract of employment.

## **5.0 Summary**

This unit has revealed the following facts:

1. Who is an employee?
2. Distinction between a contract of service and contract for service.
3. The concept of the various tests used over time to determine the status of an employee in a contract of employment.
  - The control test
  - The organization or integration test
  - The multiple test.
4. Other factors used by the court to determine an employee's status.
5. The relationship between the terms: employee, worker and workman.

## **6.0 Self-Assessment Exercise**

1. Who is an employee?
2. How do you distinguish between a contract of service and contract for service?
3. Examine the various applicable tests in the determination of the status of an employee under a contract of employment.

## **7.0 References/Further Reading**

Nwazuke, A.N. (2001). *Introduction to Nigeria Labour Law*. (1st ed.). Ago-Iwoye: Department of Public Law & Jurisprudence, Faculty of Law, Olabisi Onabanjo University.

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

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

Trade Disputes Act, Cap 432 LFN 1990.

Trade Unions Act, Cap 437 LFN 1990.

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

## Unit 4 Employer and Employee - Duties and Obligations

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### 1.0 Introduction

The duties of master and servant (employer and employee) arise both under the contract and out of the relationship from which that contract arises. These duties are the subject of discussion in this unit.

### 2.0 Objectives

At the end of this unit, you should be able to:

- mention the reciprocal duties of the employee and his/her employer, which, in the absence of express terms to the contrary are implied into all contracts of employment
- state the effect in the case of a breach of any of these duties by either party will be discussed.

### 3.0 Main Content

#### 3.1 The Implied Duties of the Employee

##### The duty of obedience

The fundamental duty of the employee is to carry out his duties in obedience to the reasonable and lawful order of his employer. Breach of this duty by an employee, usually, attracts the penalty of summary dismissal. In *NWOBOSI V A.C.B. Ltd (1995) 6 N.W.L.R (pt 404) 658* the Plaintiff/Appellant was employed by the respondent bank. He was dismissed summarily for disregarding the respondent's express instruction on loans and advances. The Supreme Court upheld the trial and appellant courts' decisions.

The order which an employee is contractually bound to obey must be lawful and reasonable. It is neither lawful to order a high ranking employee to do some manual job which is outside his contractual job description or content, nor, reasonable to order an employee to remain in an area though within his contractual service area, where his life or health is exposed to grave danger.

See: *OTTOMAN BANK V. CHAKARIAN (1930) A.C. 277*.

Generally, an isolated act of disobedience may not automatically justify a dismissal unless the act of disobedience amounts to a repudiation of the fundamental condition of the contract or the nature of the act is of sufficient magnitude

Lastly, for a single act of disobedience to justify a summary dismissal, it must be willful as was held in *LAW V LONDON CHRONICLE LTD (1959)2 ALL E.R. 386*.

### **The duty of co-operation**

This duty requires an employee to discharge his contractual duties in a manner that promotes the object of his employment. While this duty does not impose a positive obligation on an employee to do more for his employer than his contract requires, it does, however, demand that an employee should execute his contractual obligations so as not to willfully obstruct the business of his employer. To act conversely will amount to a breach of contract.

See: *SECRETARY OF STATE FOR EMPLOYMENT V ASLEF (1972) 2 Q.B. 455.*

### **The duty of care**

It has been recognized at common law that an employee owes his employer a contractual duty to exercise reasonable care in the performance of his contractual obligations. Thus, where an employee's negligence, in the course of his employment, has resulted in damage to third party and his employer has been made vicariously liable for the resultant damage, the employer, can recover the damages which he has so far paid from the employee, on account of the employer's breach of his contractual duty of care.

See: *HARMER V. CORNELIUS (1856) 5 C.B.N.S. 236.*

See also: *LISTER V. ROMFORD ICE AND STORAGE CO LTD (1957) A.C. 535.*

### **The duty of fidelity**

While it is indisputable that a servant owes his employer an implied duty of fidelity or of faithful service, the practical difficulty lies in giving a precise definition of this nebulous duty. Admittedly, each must depend on its facts.

However, it is unquestionable that this duty requires an employee not to use the position which he holds by virtue of his employment, or the knowledge which has come to him by virtue of that position, in such a way that his personal interests conflict with his duty to his employer.

It is also an aspect of this duty that an employee should not *knowingly; deliberately and secretly set himself to do in his spare-time, something which would inflict great harm on his employer's business.* This duty is divided into the following:

1. Good faith or honesty – *MAJA V. STOCCO (1968) NLR 372.*
2. Spare – Time - *HIVAC V. PARK ROYAL SCIENTIFIC INSTRUMENT LTD. (1946) 1 CH. 167.*
3. Ex-Employees – *AMBER SIZE AND CHEMICAL CO. LTD. V. MENZEL (1913) 2 CH. 329.*
4. Invention – *BRITISH SUPHON CO. LTD V. HOMEWOOD (1956) 2 ALL E.R. 897.*

### **Duty not to misuse the employer's confidential information**

An employer's confidential information is regarded as part of his property which, like any other type of property is entitled to protection. It is for this reason that employers often insert a clause in the contract of employment against disclosure of sensitive and confidential information.

In practice, such sensitive information often includes marketing plans and business strategies, financial plans, industrial relation strategy or production formulae.

### Self-Assessment Exercise

Examine the various implied duties imposed under a contract of employment on an employee.

## 3.2 Covenants in Restraint of Trade

The contract of employment may contain a term which stipulates that an employee, on the cessation of his present employment, will not set up on his own, or be employed by other employers, in the same line of business as that of his employer.

At common law, all covenants in restraint of trade are *prima facie* unenforceable. They are enforceable only if they are reasonable with reference to the interest of the parties concerned and the public.

However, it has been held that an employer who seeks to enforce a restrictive covenant must show:

- That he has some proprietary interest deserving of protection.
- That there is danger or mischief from which he seeks to protect that interest.
- That the restrictive covenants he has put in place to safeguard that interest is reasonable. That is, reasonable with respect to the time and geographical area to which it is limited.

See: *KOUMOLIS V LEVENTIS MOTORS LTD (1973) 8 N.S.C.C. 557*.

### Self-Assessment Exercise

1. Explain the term “covenant in restraint of trade.”
2. Mention the condition precedent for a covenant in restraint of trade to be enforceable.

## 3.3 The Implied Duties of the Employer

### Duty to pay wages

It is generally accepted that the most significant consideration which an employer may give to an employee in return for work performed or services rendered to the employer is the employee’s monetary remuneration in terms of salary or wages in legal tender such as cheques, cash or postal orders.

It will amount to a repudiating breach of contract, giving rise to an action for damages or debt, for an employer to refuse or fail to pay agreed remuneration. See generally Section 1-4 of the Labour Act.

See also: *NIGERIAN AIRWAYS LTD V. GBAJUMO (1992) 5 NWLR (PF 244) 735*.

*YUSUF V. VOLKSWAGEN OF NIGERIA LTD* (1996) 7 NWLR (PT. 463) 746.

However, the employer's obligation to pay remuneration may cease under the following circumstances:

- Sickness – *PETRIE V. MACFISHERIES LTD* (1940) 1 K.B. 258.
- Lay-off – *BROWNING V. CRUMLIN VALEY COLLIERIES LTD* (1926) 1 K.B. 522.
- Suspension - *YUSUF V. VOLKSWAGEN OF NIGERIA LTD* (1996) 7 NWLR (PT. 463) 746.
- Industrial action – SEC. 42(1) of the Trade Disputes Act, CAP. 432 LFN 1990.

### **Duty to provide work**

The contract of employment does not normally oblige an employer to provide his employee with work to do, provided he pays him his wages or salary as and when due. This duty is established by section 17 of the Labour Act, Cap, 198, Laws of the federation of Nigeria, 1990.

### **Duty to treat with respect**

The employer's obligation to treat his employees with respect is the correlative of the employee's obligation of co-operation, and obedience.

This implied duty requires the employer to treat his employees with such consideration as would facilitate, and not obstruct or impede the employee's performance of his contractual duties.

See: *TURNER V. SAWDON* (1901) 1 K.B. 653.

### **Duty to provide adequate plant appliances and premises**

The employer owes the employee the duty to provide adequate plant, appliances equipment and premises.

### **Duty to provide a safe system of work**

The duty in this case is to ensure that the employer carries out his operation in a safe manner. It deals with supervision and safety precautions which the employer uses in his operations.

By section 65 and 66 of the Labour Act, the employer is bound to provide and maintain safe sanitary system for the servant, provided such facilities and arrangements comply with such regulations as may be specified by the minister in respect of labour health areas.

See: *COLE V. TRAFFORD* (No 2) (1918) 2 K.B. 523.

*I.I.T.A. V AMRAMI* (1994) 3 NWLR (PT. 332) 296.

### **Duty to provide a safe place of work**

This duty is held to arise wherever the employee is doing his work within the scope of his employment. In *BRYCE V. SWAN HUNTER GROUP PLC & OTHERS* (1987) L.T.L.R employers were held liable for the death of an employee when, through their negligence and breach of



statutory duty, they failed to take precautions against exposure to asbestos dust. The precautions which ought to have been taken care were decided according to the state of knowledge at the time.

See: *WESTERN NIGERIA TRADING CO. LTD V. BUSARIO AJAO* (1965) NMLR. 178.

### **Duty to take care**

An employer has a common law duty to take care of the safety of his employees. The duty is that of a reasonable man; but a reasonable man does not hold himself out as having specialized skills without expecting to be treated according to the standards of his representation.

### **Duty to provide a reasonable competent**

The master is under a duty to provide a reasonable competent and responsible workforce especially where the duties of one staff are closely linked with those of another or are such as to affect other staff.

See: *HUDSON V. RIDGE MANUFACTURING CO. LTD.* (1957) 2 Q.B. 348.

### **Self-Assessment Exercise**

Discuss the various implied duties of the employer.

## **4.0 Conclusion**

A thorough understanding of the various implied duties of both the employer and the employee under a contract of employment will not be complete without stating, in passing that there are corresponding obligations imprinted on them by virtue of their respective duties. These obligations are also as important as the duties.

## **5.0 Summary**

At the end of this unit, you should be able to identify the following:

- the various implied duties of the employee
- the covenants in restraint of trade
- the various implied duties of the employer
- the duties and obligation implied through the contracts on both the employer and the employee.

## **6.0 Self-Assessment Exercise**

1. Explain the various duties implied on the employee by virtue of his contract of employment.
2. Examine the basic distinctive features and exception in the covenants in restraint of trade.

3. List and explain the implied duties of the employer.

## 7.0 References/Further Reading

Munkman. (n.d). Employer's Liability (9th ed.).

Nwazuo, A.N. (2001). *Introduction to Nigeria Labour Law* (1st ed.). Ago-Iwoye: Department of Public Law & Jurisprudence, Faculty of Law, Olabisi Onabanjo University.

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Trade Unions Act, Cap 437 LFN 1990.

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

Winfield and Jolowics on Torts (1984).