NATIONAL OPEN UNIVERSITY OF NIGERIA

LAW 231

Labour Law 1

Module 4

LAW 231 (Labour Law I)
Module 4

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Unit 1 Trade Unions

1.0 Introduction

From time immemorial, there have been associations and unions in various fields of human endeavor. The aims of the association or union in most cases include but are not limited to the regulation of conduct and affairs of its member. In the same vein, employers of labour do form associations and unions for the purpose of protecting their various interests in the relationship with their employees who usually, like their employers do form associations and unions for the purpose of protecting their interests under their various contracts of employment. This is the basis of the establishment and formation of trade unions.

2.0 Objectives

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

- explain why we have trade unions as a concept in labour law in Nigeria
- state the major particulars in relation to the law that provides for the formation of trade unions in Nigeria
- discuss the formation and registration of trade unions with a view to establishing their legal status.

3.0 Main Content

3.1What are Trade Unions?

The parent law for the establishment of trade unions in Nigeria is the Trade Unions Act, cap 432, Laws of the Federation of Nigeria, 1990. Section 1 (1) of the act defines a trade union as:

> Any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and condition of employment of workers, whether the combination in question would or would not, apart from this Act, be a lawful combination by reason of any of its purposes being in restraint of trade, and whether its purpose does or does not include provision of benefits for its members.

From the foregoing definition, two criteria must exist for the purpose of determining whether an association, for purposes of registration, qualifies to be treated as a trade union. These are:

- The association must comprise workers or employers
- The main or principal purpose of the association must be to regulate the terms and conditions of workers.

Association of workers

From the above definition only an association of workers or employers is registrable as a trade union. By the provision of Section 52 of the Trade Unions Act, a worker means:

Any employee, that is to say any member of the public service of the federation or of a state or any individual (other than a member of any such public service) who has entered into or works under a contract with an employee, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing and whether it is a contract personally to execute any work or labour or a contract of apprenticeship.

The principal purpose

The general principle of law in this regard is that whatever other lawful purposes a trade union allows itself under its rules, books or constitution, its principal or overriding purpose must be the regulation of terms and conditions of employment of workers.

In line with the general law and by the provisions of section 7(1) (d) of the Trade Union Act, where the principal purpose for which a trade union is being carried on has ceased to be that of regulating the terms and conditions of the employment of worker, the registrar of trade unions is empowered to carry out an inspection on the valid registration of such a union.

The courts, in order to determine what the principal purpose of an association is, must peruse the rule book or constitution of the association in its totality, especially its objects or purposes clauses. See *RE: UNION OF IFELODUN TIMBERS DEALERS AND ALLIED WORKMEN* [1964] 2 ALL N.L.R. 63.

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

- Collective bargaining
- Industrial actions.

Self-Assessment Exercise

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

3.2 Formation, Registration and Legal Status of Trade Unions

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

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

If the legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken to have impliedly given the power to make it suitable in a court of law for injuries purposely there by its authority and procurement.

There has not been any dissenting view or opinion in all cases involving trade unions both in England and in Nigeria since the decision in the above cited case and this is indicative of the fact that given the rights and statutory recognition of a registered trade union, a refusal to call it a *legal entity* may be the result of a mere dislike of a terminology.

Self-Assessment Exercise

Are trade unions legal entities?

3.3 Union Membership and Office

See – Sec. 37&40 of the 1999 Constitution of Nigeria.

See also *OSAWE V. REGISTRAR OF TRADE UNIONS* [1985] I.N.W.L.R. [PT.4] 755.

3.4 Union Rule Book

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

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

The rules of a registered trade union constitute a contract between the union and its members. The contract is exhaustive as to the purposes of the union and the rights and obligations of its members. Therefore, it will be *ultra vires* the union to do a thing not provided for in its rules, that is, by the terms of the contract.

Self-Assessment Exercise

What is the significance of the union rule book?

3.5 Suspension and Expulsion of Members

The authority of a trade union to act on behalf of its members is derived from its rule book. A trade union can exercise only those disciplinary measures over its members that are stipulated in its rules. The following are the criteria required by the courts for this purpose;

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

Self-Assessment Exercise

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

3.6 Union Membership and the Rule in *Foss V. Harbottle*

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

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

- Actions in respect of wrongs done to a company must be brought by the company and in its name
- The court will not interfere in respect of actions if the wrong done or the irregularity complained of is within the powers of the majority to rectify.

The exceptions to these rules are the following:

1. It does not apply where the action is brought to restrain the union from an ultra vires act
2. Where the action is to restrain the union from doing by a simple majority that which ought to be done by a special majority the rule will be excluded
3. Where the action is to prevent a fraud on the minority
4. Where the action is brought to restrain the invasion or violations of membership rights.

Self-Assessment Exercise

Discuss the rule in *FOSS V. HARBOTTLE* and its exceptions.

3.7 Union Membership and the Doctrine of Closed Shop

The term "Closed Shop" is a colloquialism for *Union Management Agreements.* This means collective agreement between trade unions and employers, whereby "employees come to realize that a particular job is only to be obtained or retained if they become and remain members of one of a specified number of trade unions."

In pre-entry closed shop, the prospective employee must first join a particular union before he could be employed while in post-entry closed shop, the employee must join the required union within a short time after acquiring employment. If is however important to note that in any trade or industry in which the close shop operates, the consequences of an employee losing his union membership may be disastrous to his capacity to earn a living.

The concept of closed shop is an aspect of the English labour law, which was not incorporated into Nigeria labour law.

Self-Assessment Exercise

Discuss the concept of closed shop in relation to labour law and trade unionism.

3.8 Exhaustion of Internal Remedies

Usually, the rules of the union may expressly provide that a *member cannot sue the union until he has exhausted all internal remedies provided by the rules.* This provision where available, requires an aggrieved member to exhaust all domestic remedies before proceeding to the court.

There are four exceptions to this rule:

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

Self-Assessment Exercise

State the general rule and discuss the exceptions to the exhaustion of internal remedies rule in trade unionism.

Re-organization of trade unions

See the following enactments:

1. Time Unon Ordinance of 1938.
2. Trade Union (Amendment) Ordinance caps 200 of 1958.
3. Trade Union (Amendment) Act of 1978-1978.
4. Trade Union Act, Cap. 437, LFN, 1990.
5. Trade Unions (Amendment) Decree no. 4 of 1996.

4.0 Conclusion

The basis of this unit is to expose you to the operation of trade unions in Nigeria against the backdrop of Nigerian labour law. Further study of the relevant provisions of the law as stated above will in no way improve the knowledge of the student in respect of labour law matters.

5.0 Summary

This unit has dealt with the following facts in the Nigerian labour law.

- Exposition of the statutory definition of what trade unions are.
- Distinguishing factors between association of workers or employees and the principal purpose.
- General and statutory requirement for the formation and registration of trade unions.
- Legal status of trade unions.
- Legal position of union membership and the office.
- Purpose and significance of the union rule book.
- Legal requirements for the suspension and expulsion of members of a trade union.
- Union membership and the rule in *FOSS V HARBOTTLE.*
- Union membership and the concept of the "closed shop."
- General rule and exceptions in trade unionism.
- Relevant statutes in recantation to the re-organisation of trade unions.

6.0 Self-Assessment Exercise

What is the legal status of trade unions? Discuss.

7.0 References/Further Reading

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

Ganz, G. (1967). *Public Law Principles Applicable to Dismissal from Employment.*

Iluyomade&Eka.(1980). *Cases and Materials on Administrative Law in Nigeria.*

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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.

Winfield and Jolowics on Torts (1984).

Unit 2 Industrial Action

1.0 Introduction

The phrase *industrial action* is a generic form used to represent concerted efforts which employees may take in order to exert pressure on the employer so as to persuade or compel him to accede to their demands or claims.

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

2.0 Objectives

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

- discuss the concept of industrial action
- discuss the various means by which the employees, either by themselves or through their unions drive home their points in terms of demands from their employee
- mention the causes and effects of industrial action on the economy and the advantages or otherwise attributable to this concept.

3.0 Main Content

3.1 Strike and the Contract of Employment

In some cases, it is important to note that in embarking on industrial action short of strike, employees may be liable for breach of their contract of employment, depending however, on the express and implied terms of the contract.

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

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

At common law, a strike may not only be in breach of the contract of employment of the strike, entitling the employer to summarily dismiss its employees. Essentially, employees cannot embark on a strike without issuing a strike notice on their employers otherwise the

employer will exercise his right to summarily dismiss the employees which is a right he has under the contract of employment.

Where the strike notice is shorter than the contractual notice, the employer can either treat such a notice as anticipatory breach by the employees of their contracts of employment or wait for the threatened strike to take place. The notion of a strike notice merely suspends the contract of employment. This has its attendant problems as follows:

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

Self-Assessment Exercise

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

3.2 Picketing

Picketing is defined as the physical means employed by employees either to intensity the economic pressure meted on the employer or to ensure that the concerted stoppage of work is not undermined.

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

Self-Assessment Exercise

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

3.3 Lock–Out

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

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

As in the case of strike action by employees, the exercise of the option of "lock–out" by the employer is not automatic as he is required to issue "lock–out" notice to the affected employees without which he will be liable for deprivation of work as contained in the contract of employment.

Self-Assessment Exercise

Compare and contract strike and "lock–out" in relation to the trade disputes act.

4.0 Conclusion

The various options available to any of the aggrieved parties in a contract of employment like strike action, picketing and "lock-out" have been discussed in the most simplified way available and as could be noticed only the third option, "lock–out", is in favour of the employer. This is indicative of the fact that the whole gamut of our labour law is in favour of the employee.

5.0 Summary

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

- The legal meaning and implication of strike action as an alternative to drive home the employees demand.
- The legal effect of the issuance of strike notice by the employee on the employer.
- The significance of picketing.
- The effect of "lock-out" option as available to the employees.
- The various applicable statutes relevant to trade disputes.

6.0 Self-Assessment Exercise

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

7.0 References/Further Reading

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

Ganz, G. (1967). *Public Law Principles Applicable to Dismissal from Employment.*

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

Winfield and Jolowics on Torts (1984).

Unit 3 Tortuous Liability and Trade Disputes

1.0 Introduction

The purpose of this unit is to examine those areas of contracts of employment that may result in tortuous liability either by the employee solely or on behalf of the employee as distinguished from various liabilities. This examination will be in relation to trade disputes as governed and protected by the relevant statutes.

2.0 Objectives

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

- mention those common law torts which a trade union, its officials and members are prone to commit in the cause of an industrial action
- examine the extent of statutory protection afforded to trade unions and unionists from those torts, in the prosecution of trade dispute.

3.0 Main Content

3.1 Conspiracy

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

1. **Criminal conspiracy**

In *CROFTER HAND – WOVEN HARRIS TWEED CO. LTD V. VELTCH* (1942) A.C.435, Viscount Simmonds stated that:

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

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

See *section 36 (12) of the 1999 constitution*

See also *AOKO V. FAGBEMI {1961} 1 ALL C.L.R. 400* and

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

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

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

2. Civil conspiracy

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

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

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

3.2 Inducing Breach of Contract

There are two major forms of inducement which may result into breach of contract. These are direct and indirect inducements. In direct inducement, the defendant personally intervenes in a contractual relationship by persuading one of the contracting parties to break his contract with the other party.

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

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

3.3 Elements of the Tort

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

Knowledge and intention

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

Interference

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

Breach and damage

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

3.4 Defences

Some of the defences available to a defendant in tortious liability in respect of trade dispute are as follows:

Common law

At common law justification is a defence to the tort of inducing breach of contract. The defence consists in the admission of the act complained of but with the plea that the defendant was justified in action as he did and ought reasonably to be exercised having regard to the surrounding circumstances.

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

Statutory defences

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

Note: For this defence to be negated it must be proved that:

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

Intimidation

The general position of the law in respect of this defence is that it is what the defendant has threatened to do that determines whether the tort of intimidation has been committed or not. If what the defendant has threatened to do is unlawful, he would be liable to the party who has suffered damage as a result of the person threatened complying with the threat.

However, if what the defendant has threatened of do is what he has a right to do, that is, when no unlawful means is involve, he would not have committed the tort intimidation even thought a party has suffered damage as a result of the person threatened complying with the threat.

Self-Assessment Exercise

1. Define conspiracy in relation to trade dispute.
2. Differentiate between civil and criminal conspiracy with respect to trade dispute.
3. Examine the basic features in inducing a breach of contract.
4. Examine the elements of the tort and available defence to a defendant.

3.4 Section 23 of Cap. 437

The Trade Unions Act, cap 437, LFN, 1990 provides a variety of protection to unionists in the exercise of the rights and protection of their members. Of particular importance is the protection granted by section 43(1) of the Trade Union Act.

In the same vein, section 23 of the Act provides the union itself absolute immunity from tortious liabilities provided, of course, the liabilities arose from torts committed in contemplation or in furtherance of a trade dispute.

Section 23(1) of the Trade Union Act reads:

An action against a trade union {whether of workers or employers} in respect to any tortious act alleged to have been committed by or on behalf of the trade union in contemplating or in furtherance to a trade dispute shall not be entertained by any court in Nigeria.

Section 23(2) of the Trade Union Act reads:

Subsection (1) of this section includes both to an action in its registered name and to any action against one or more persons as representatives of a trade union.

The following points are deducible from the foregoing provision:

1. It is the trade union as a registered association under the Trade Unions Act, that is, protected. Agents of the union whether officials or members are not protected.
2. Protection is given to the union whether it is being sued in its registered name or in a representative capacity.
3. A trade union is not debarred from suing for torts committed against it.
4. There is protection only when a trade dispute is contemplated or being furthered.

Self-Assessment Exercise

What is the legal effect of the provision of section 23(1) & (2) of the Trade Union Act, cap 437, LFFN, 1990 with respect to protection granted to unionists?

3.5 Trade Dispute

This section will deal with the substance of trade dispute.

3.5.1 What is a Trade Dispute?

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

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

From the foregoing definition, for there to be a trade dispute, the following must be present.

1. The dispute must be between proper parties i.e. between employer and workers or between workers and employers.
2. The subject matter of the dispute must involve any of the following:

- Employment or non-employment, or
- Terms of employment; or
- Condition of work of any person.

3.5.2 "In contemplation" or "in furtherance" of a trade dispute

"In contemplation"

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

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

"In furtherance"

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

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

Self-Assessment Exercise

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

- "In contemplations" and
- "In furtherance" of a trade dispute.

4.0 Conclusion

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

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

5.0 Summary

Through this unit, efforts has been made to expand the knowledge of the student with a view to understanding the fact that no contract of employment is devoid of problems when it comes to the point of implementation of the terms. There following points have been aptly discussed in this unit:

- Basic concept of torts in relation to trade disputes and trade unionism. Criminal and civil conspiracies distinguished.
- Effect of inducement that causes a breach of contract in a contract of employment. Elements of the tort of conspiracy.
- Available defences to the defendant.
- Protection offered the unionists and the unions by the enabling acts.
- Meaning of a trade disputes.
- Relevance of acts done "in contemplation" and "in furtherance" of a trade dispute.

6.0 Self-Assessment Exercise

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

7.0 References/Further Reading

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

Ganz, G. (1967). *Public Law Principles Applicable to Dismissal from Employment.*

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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).

Unit 4 Settlement of Trade Disputes

1.0 Introduction

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

2.0 Objectives

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

- mention the relevant and most prevailing statute in relation to trade disputes is the Trade Disputes Act, Cap 432, LFN, 1990
- discuss the various modes or means of settlement of industrial disputes, their advantages, disadvantages and suggestions for improvement.

3.0 Main Content

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

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

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

Section 17(2) provides for the punishment on anyone who contravenes the provision of section 17(1) of the Act. The effect of section 17(1) of the Trade Disputes Act sets the headings to be discussed under the main body part of this unit.

3.1 The Parties

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

Section 52 of the Trade Union Act defines who a worker is and a similar definition is contained in Section 1 of the Workmen's Compensation Act.

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

Naturally, human interaction especially in an industrial setting must of necessity, in certain circumstances and under certain conditions, produce conflict or dispute, despite the virtual prohibition of strikes and lock-outs by Section 17(1) of the Trade Disputes Act.

The simple implication of the foregoing exposition is that for there to be an industrial conflict or trade dispute there must be an employer and an employee making up the parties to the dispute.

Self-Assessment Exercise

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

3.2 Arbitration

Despite this virtual prohibition of strike and lock-outs, there have been strikes and lock outs.

There is no doubt that the intervention of a third party will be inevitable where the machinery of collective bargaining process is inadequate. The government has often intervened by providing the required machinery as exemplified by the enactment in 1941 of the Trade Disputes (arbitration and inquiry) Act which vests the power for the resolution of industrial disputes in the government.

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

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

The tribunal may consist of:

- A sole arbitrator; or
- A sole arbitrator assisted by assessors; or
- One or more arbitrators under the presidency of the chairman or vice-chairman.

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

The parties have seven days from the date of the notification to object to the award. In the absence of any objection, the minister is bound to confirm the award by a notice of confirmation of the award published in the Federal Gazette. With the confirmation of the award, it becomes binding on the parties concerned.

See section 8, 12 and 13 of the Trade Disputes Act in relation to arbitration.

In order to facilitate the speedy settlement of trade disputes, and to free the panel from suspicion, the disputants should and are usually allowed direct access to the panel and thereafter to the National Industrial Court. Industrial tribunal gives its award in the open and the award is binding from the day it was made or such other date as may be specified in the order.

Self-Assessment Exercise

Explain the mode of settlement of trade disputes through arbitration Tribunal.

3.3 The National Industrial Court

Section 19 of the Trade Disputes Act establishes the National Industrial Court. The court has a president and four other members. The members of the court are appointees of the President of Nigeria after consultation with the Federal Judicial Service Commission.

One of the basic requirements of a candidate for the post of the president of the court is that such person must either have been a High Court Judge or a person qualified to practice as a Solicitor and advocate in Nigeria and has been so qualified for not less than ten years.

The court deals with matters referred to it with the assistance of assessors who shall consist of two nominees of the employers concerned chosen from a panel of employers representative drawn by the minister under section 43 of the Act, and two nominees of the workers concerned, chosen from a panel of workers representatives.

Self-Assessment Exercise

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

3.4 The Jurisdiction of the Court

The power and authority to adjudicate on industrial and trade disputes is conferred on the National Industrial Court by the provision of section 20 of Trade Disputes Act. This section confers exclusive jurisdiction on the court to make award for the purpose of settling trade disputes and determining questions as to the interpretation of any collective agreement, any award made by an arbitration tribunal or by the court itself under part 1 of the Act or the terms of settlement of any trade dispute as recorded in any memorandum under section 7 of the Act. By virtue of section 20 (3) of the Act, no appeal shall lie to any other court or person from any determination of the National Industrial Court.

In the same vein, in spite of the unlimited powers of state High Courts, they have no jurisdiction in industrial or trade dispute matters. This is however inconsistent with the provisions of section 272 (1) of the 1999 constitution which confers unlimited civil and criminal jurisdiction on State High Courts and has been said to be void to the extent of that inconsistency. This issue was canvassed at the Supreme Court in *W.S.W. LTD V. IRON of STEEL WORKERS UNION OF NIGERIA* [1987] L.N.S.C.C. 133. In that case, the apex court declared section 20 of the Trade Disputes Act as void to the extent of its inconsistency with the 1999 Constitution.

Self-Assessment Exercise

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

3.5 Enforcement of Award

The National Industrial Court, under section 20(1) of the Act, has thirty working days within which to determine any dispute referred to it. The award of the court becomes binding on the employers and workers concerned either from the date of the award or from such date as may be specified in the order.

The Court, as well as the Industrial Arbitration Panel, are not only empowered to enforce their awards but also to commit for contempt any person or a representative of a trade union who does any act or commits any omission which in the opinion of the court or the panel constitutes contempt of the court or panel.

Self-Assessment Exercise

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

4.0 Conclusion

The rate at which the law in relation to industrial trade disputes settlement developed in Nigeria is not comparable with what obtains in other jurisdictions. However, it is a highly commendable situation as the present position as posited above is comparable with what obtains in advanced countries of the world, save for some minor differences. However, the points enumerated and discussed under the main body of this unit constitute the bulk of the relevant points required.

5.0 Summary

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

6.0 Self-Assessment Exercise

1. What do you understand by the term "settlement of industrial or trade dispute"?
2. Examine the effect of section 17(1) of the Trade Dispute Act; Cap 432, LFN.1990.
3. Who are the necessary parties to an industrial or trade dispute?
4. What are the roles of an arbitration panel in trade dispute settlement?
5. The jurisdiction of the National Industrial Court under section 20 of the Trade Dispute Act is unfettered. Discuss?
6. The enforcement of awards is as of right. Discuss.

7.0 References/Further Reading

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Unit 5 Protecting Health and Safety

1.0 Introduction

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

2.0 Objectives

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

- review and examine the relevance of those statutes designed to govern, order and regulate industrial activities generally
- mention these statutes which can be viewed first as instruments designed to promote the health, safety, welfare and security of the worker
- discuss the instruments for providing compensation for the employees in case of injury.

3.0 Main Content

3.1The Factories Act

The Factories Act, cap 126 laws of the Federation of Nigeria (LFN) 1990 was primarily designed to govern order and regulate industrial activities generally.

In essence, its main duty is to prevent occupational accidents and diseases in factories. In *PULLEN V. PRISON COMMISSIONARS* [1957] 3 ALL E.R.470, Lord Goddard, C.J. commenting on the object of the English Factories Act of 1937 said:

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

Section 89(1) of the Factories Act, 1990 which is in pari material with section 175 of the English Factories Act, 1961, which replaced section 151 of the 1937 Act defines what a factory is.

You are hereby directed to see the full text of that section. it is also important to state at this point that it has earlier being said that Nigeria labour law principally is derived from English labour law and as such the Factories Act, LFN 1990 is the Nigerian version of the English Factories Act of 1961 albeit with little modification to fit into our own peculiar local circumstances.

Essentially, it is an off-shoot of the English common law, most of which is now codified. However, a thorough understanding of the provisions of section 37(1) of the Act will reveal the following points:

- A factory premises must be used for trade or gain in order to qualify as a factory. The phrase "trade" or "gain" connotes an intention to make profit. Thus, the kitchen of a manual hospital had been held not to be a factory because the mincing of meat by electrical means carried on in it was not carried on by way of trade or gain.
- The employer must have access to or control over the promises if the place is to be a factory.
- Generally, the person or persons who work in a factory must be employed. Thus it has been held that a prison workshop was not a factory under the definition of factory in the Act since there was no relationship of master and servant or employment for wages.

Part II of the Act, which is on general health provisions, imposes on the occupiers of factories, duties designed to protect the health of those employed in such places. Sections 7-12 deal with cleanliness, overcrowding, ventilation, lighting, damage of floors and sanitary conveniences.

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

1. Prime movers see sec. 14; these are engines, motors and other enhancements which provide mechanical energy derived from steam, water, wind, electricity, the combustion of fuel and other sources.
2. Transmission machinery; See section 15. This consists of every shaft, wheel, drum, pulley, and system of fast and loose pulleys, coupling, clutch, driving-belt or other devices by which the motion of a prime mover is transmitted to or received by any machine or appliances.
3. Other dangerous parts of machinery. The combined effect of the provision of sections 14(1), 15(1) and 17(1) of the Act is that it is obligatory on the occupier of a factory to securely fence there parts of a machinery unless they are in such position or of such construction as to be safe to every person employed or working on the promises as it would be if securely fenced.

Self-Assessment Exercise

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

3.2 The Nature of Fencing

The primary purpose of section 17 of the Act is that if imposes a duty to fence every dangerous part of machinery on the owner of the factory. Prime movers and transmission machinery must be securely fenced. The duty to fence any other part of machinery arises only if that part is dangerous.

In determining whether a part of machinery is dangerous, the test to be applied is *forcibility*. In other words, a part of machinery is dangerous if it could reasonably cause harm. Section 19 of the Act, which specifically provides for fencing of dangerous machineries provides as follows:

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

From the above provision of the Act, machinery means, for purpose of fencing, machinery used in the course of the factory's processes or production as distinct from machinery which is merely a product of the factory. The fencing requirement therefore, *extends to all machinery forming part of the equipment of a factory, whether in a fixed position or capable of moving from place to place, thus they apply to a mobile crane and also vehicles used in a factory…but not visiting vehicles….*

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

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

Self-Assessment Exercise

What are the essential requirements of section 14, 15, 17 and 19 of the Factories Act, 1990?

3.3 Elements of Civil Liability

The duty to fence imposed by the Factories Act is a duty of absolute liability, therefore, it is not open to the defendant to say that he had done all that was reasonable to prevent or avoid the danger complained about.

It should not however be imagined that because of the absolute liability imposed by the Act, every failure to fence automatically results in the employer's liability. Whether the employers liability is absolute or dependent on reasonable care or foresight, it is quite clear that there is a duty on the employer to keep his machines in proper state of repair and maintenance and to take all reasonable care to maintain his plant, machinery and equipment in such condition as to be safe for those working in the factory.

See; *JOHN SUMMERS & SONS LTD V. FROST [*1955] M.C. 740.

However, before an employer will be held liable for injuries sustained by his employees as a result of unfenced machineries, the points in the next subsection must be established.

3.4 Proof of Liability

It is part of the general principle of law of evidence that he who alleges must prove-it is the plaintiff *(i.e. the employee in case of an action for breach of duty)* who has the evidential burden of proof.

The House of Lords in *BOYLE V. KODAK LTD. (1969)2 ALL E.R.437*.held that before the plaintiff can be said to have discharged the burden, the following four conditions must be satisfied.

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

3.4.1 The Principle of res ipsa loquitur as a Basis of Liability

While proof usually involves the establishment of acts or omission which can be regarded as negligent, in certain cases however, the courts will be prepared to infer from the immediate circumstances of the injury.

Res ipsa loquitur is a rule of practice or evidence not a rule of law. It is to assert the right of party claiming injury and damages due to the negligence of the other party. There must however be evidence of negligence in a reasonable way before the rule, which is a convenient way to explain an unusual accident can apply.

See. AKANMU *V. ADIGUN* [1993] 7 NWLR (pt.204) 218.

The potency of this rule was demonstrated in the case of *ODEBUNMI V. ABDULLAHI* (1997) 2 NWLR [pt 489] 526.This was an action under the fatal accident act where a trailer tanker ran into a Volkswagen car which was stationary and killed the driver/owner.

In view of the strict liability imposed on employees {factory owners and occupiers} by the Factories Act, it would appear that an employee does not really need to raise this presumption nor does he have to rely on the maxim in order to succeed in an action for damages for breach of statutory duty. Although there is so far a paucity of Nigerian cases in regard to liability under the Factories Act, one may fairly confidently assume that in view of the language of the Act and the strict liability imposed on an employer, an employee injured at work will almost certainly get a favourable treatment under the law.

As most of the sections of the Act confirm the rules of common law, reference cannot but be made to the provision and requirements of common law as to liability arising from the duty of care.

3.4.2 Foresight

> The basis of the test of duty of care laid down in the popular dictum of Lord Atkin *in DONOGHUE V. STEVENSON [1932] A.C. 562 at 580* is still relevant today. The learned Lord Justice said:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

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

3.4.3 Duty of Care

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

3.4.4 Balancing the Risk against Precautions

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

See: *WESTERN NIGERIA TRADING CO.LTD V. BUSARI AJAO* [1965] NMLR 178.

In the same vein, the degree to which care must be taken depends on a balancing of the risk against the precautions necessary to affect it. The risk is measured not only in terms of frequency, but also in terms of seriousness. All the facts of the care are taken into account not the least the particular sensibility of the plaintiff.

The balancing act is done mainly in regard to the duties imposed by common law, as balancing exercise is often discarded as demonstrated by the various reports of the cases in favour of absolute liability.

3.4.5 Attributes of the Employee

The law in this respect is that the employer must take the worker as he finds him. What this simply means is that if the employee is susceptible to a particular type of injury to which

other employees may not be susceptible, and the employee owing to his peculiar susceptibility to such a risk, the employer will not be excused from the resulting liability simply because of the plaintiff (employee's) peculiar susceptibility.

On the other hand the employer is entitled to rely on the particular employee's, experience and knowledge. As regards statutory duties it may be necessary to give instructions to an experienced man. Experience is not of course general and must relate to the work in hand, although a job may be so straight forward that it is reasonable to leave it to an unskilled man, without instruction.

3.4.6 Causation

The general rule in respect of this is that the courts must, from all the causes which have led to the injury, establish, whether the negligence of the defendant can be said to be the cause of the injury.

Industrial injury could be the result of negligence of a number of persons often bound together by contract. In such a case, the injured employee can bring an action against any or all of them, leaving the defendant to seek contribution from his other tortfeasor

In some other cases however, the injured employee may have contributed to his own injury. This is often covered by the doctrine of contributory negligence's.

Self-Assessment Exercise

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

3.5 Defences

3.5.1 Remoteness of Damage

The question of remoteness of damage is closely allied to the issue of causation, and it is a general defence to all torts. Where the employer's default is not the proximate or predominant cause of the injury, he will escape liability.

Thus in *THOMAS REREWI V. BISIRIYU ODEGBESAN* [1976] NMLR 89, the Supreme Court held that a person cannot be held liable for negligence unless the damage is caused by the negligence or as a consequence of it.

3.5.2 *Volenti non fit injuria*

This defence is usually open to the defendant, usually the employer. It is useful to a defendant where the plaintiff voluntarily assumes a risk. The essential features are:

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

Once these two essential features are present, then the defendant will be exculpated from liability.

An offshoot of this rule presupposes that an employer will not automatically be free of liability merely because a workman continues with his duty with the knowledge of the risk involved. To free the defendant from liability, the plaintiff workman must voluntarily and freely accept to take the risk.

See *SMITH V. BAKER* [1891] A.C. 235 H.L., where the House of Lords held in that case that the defence of violent non fit injured could not succeed because, although the plaintiff knew of the risk, he had not freely accepted it.

3.5.3 Contributory Negligence

This is another defence which can shield the employer from bearing the whole liability arising from the injury suffered by his workman. At common law, contributory negligence is a complete defence. The party who had the last opportunity of avoiding the accident bares the whole responsibility. Where such a party is the plaintiff, then he would lose his claim.

When contributory negligence is offered as a defence all the defendant need to prove is that the plaintiff failed to take reasonable care for his own safety. This is a defence both to negligence and breach of statutory duty, but the onus of proving same is on the defendant.

In Nigeria, the defence of contributory negligence is regulated by the following laws:

- Civil Liability (Miscellaneous Provisions) Act.
- Fatal Accidents Act.
- Section 8 of the Old Western Nigeria Torts Law.

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

In *ALIDU OREKOYA V. UNIVERSITY OF IFE* (1972) HIF/3/72, Thompson J. reduced by 50% the damages awarded to a typist who scrambled to take a bus in the university campus with the umbrella in his hand and thereby sustained injury resulting in deformity in one of his legs.

Forceability is a relevant factor in this defence and according to Lord Denning in *JONES V. LOVOX QUARRIES* (1952) 2 Q.B. 608:

A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man he might hurt himself; and in his reckonings he must take into account the possibility of others being careless.

The corpus of this doctrine therefore is that the plaintiff, though in no way contributing to the accident, has by his negligence, contributed to the degree of injury.

See *FROOM V. BUTCHER* [1975]3 ALL E.R. 520.

3.5.4 Limitation of Action

There is an absolute need for a plaintiff to bring his action within the time allowed by law if he is not to lose his right.

Limitation of Action is the principle of law which establishes the rule that a plaintiff must seek his remedy within a time limit stipulated by law after which period his action will become statute barred. The limitation period can be used as a defence to an action in tort and the defendant can plead that the time within which the plaintiff should have brought his action had expired or that the action had become statute barred.

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

1. It will be contrary to public policy for a potential defendant to have the possibility of legal proceedings hanging like a sword of Damocles over his head for an indefinite duration.
2. Where an action is moderately delayed for several years after the event which gave rise to it has occurred, memories of witnesses might have become hazy and, in some cases, vital witness may have died with the result that the truth may get depreciated.

The limitation period starts to run from:

1. the date on which the cause of action accrued; or
2. the date of knowledge, if later, of the person injured.

Example of existing limitation laws in Nigeria are:

- Limitation law of Lagos state (1994) cap. 118.
- Section 2 or the Public Officers Protection Act (POPA) cap 379, LFN, 1990.

Finally, it is apposite to state that whatever any of these defences is well articulated and pleaded, avail a defendant may be exculpated from liability.

Self-Assessment Exercise

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

4.0 Conclusion

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

5.0 Summary

At the end of this unit, you have been able to establish the following:

- The basis of the enactment of the Factories Act.

- The importance of fencing of industrial and factory's machineries.
- The various elements at civil liability at the suit of an injured plaintiff (employee) who seeks redress against the dependant [employer, occupier or owners of the factory].
- The various defences recognized by the law and available to the defendant (owner or employer).

6.0 Self-Assessment Exercise

1. Explain the basic concept behind the enactment of the Factories Act.
2. What is the relevance of fencing an industrial or factory machinery?
3. Enumerate and discuss the various elements of civil liability in an industrial relation suit.
4. Enumerate and explain the various defences available to a defendant (employer) to the suit of a plaintiff (employee) in a case of injuries sustained in the factory.

7.0 References/Further Reading

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Unit 6 The Workmen's Compensation Act

1.0 Introduction

The Workmen's Compensation Act, cap 470, laws of the Federation of Nigeria 1990 (hereinafter referred to as the Act), was promulgated as a decree on 12th June, 1987. It actually replaced the Workmen's Compensation Act of 1958 which hitherto had been the subject of severe criticisms on account of its narrowness of scope, obsolescence and irrelevance to modern industrial needs. It was major these stationary that the new Act was promulgated to correct and it has so far lived up to its biddings.

2.0 Objectives

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

- discuss the corpus of the Factories Act
- describe the various conditions under which an employee will be entitled to compensation from an employer.

3.0 Main Content

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

3.1 Who is a Workman?

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

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

Certain categories are however excluded from the application of the Act by virtue of Section 2 (2) and 3 (2) (a) --- (f) of the Act.

Therefore, by necessary implication, from the definition provided by the Act, a workman now includes practically everybody from cleaner to the managing director or the permanent secretary in the civil service, as section 2 (1) of the Act states that it shall apply to a

workman employed in the public service of the Federation and of any state thereof; and in the Nigeria police.

3.2 Who is an Employer?

By the provision of section 41(1) of the Act, an employer includes:

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

Self-Assessment Exercise

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

3.3 When is a Workman Entitled to Compensation?

For the purpose of entitlement to compensation under the Act, the workman (or his dependant, in fatal accident cases) must prove, except where the Act otherwise provides, that he has suffered personal injury by accident arising out of and in the course of the employment.

See section 3(3) (a) & (b) on meaning of *out of and in the course of employment*.

The general rule is that an employer is not liable to pay compensation in respect of any injury which does not incapacitate the workman for a period of at least three consecutive days from earning full wages at the work at which he was engaged. Furthermore, no compensation is payable where the injury is attributable to the serious and willful misconduct of the workman.

Where however an accident results in death or occasions a permanent incapacity of the workman, the accident would be deemed to have arisen 'out of and in the course of his employment', notwithstanding that the workman was at the time of the accident acting in contravention;

- of any statutory or other regulation applicable to his employment; or
- of any orders given by or on behalf of his employer, or
- that he was acting without instructions from his employer, if such act was done by the workman for the purpose of and in connection with his employer's trade or business.

The significant effect of the above instances is that misconduct of the workman would not disentitle him from claiming compensation, so long as he misconducts himself in the interest of his employer's trade or business. The contrary would be the case where death or incapacity was due to a deliberate self-injury.

Similarly, no compensation is payable in respect of death or incapacity resulting from personal injury, if the workman has at any time knowingly misrepresented to his employer that he was not suffering or had not previously suffered from that injury or similar one.

Self-Assessment Exercise
Under what situations is an employee entitle to compensation?

3.4 What is Accident?

The liability of an employer to pay compensation depends on the occurrence of an accident in the course of his workman's employment. The word *accident* was not defined anywhere in the Act. However, the word has been judicially interpreted under the repealed Workmen's Compensation Acts of England.

In *FENTON V. THORLEY* [1903] A.C. 443, the House of Lords, in construing the word *accident* under section 1(1) of the Workman's Compensation Act, 1897 [section 1(1) is identical to section 3(1) of the Nigeria Act], held that *accident* should be given its popular and ordinary meaning and when so construed, it meant any mishap or unflawed event not expected or designed.

The law in respect of an accident giving rise to a disease which results to an injury is that the injury would be treated as arising from the accident itself. In *BRINTONS LTD V. TURVEY* [1905] A.C.200, a bacillus passed into the eye of a workman from the wool which he was sorting. He became infected with anthrax of which he died. *Lord Mac Naghten*, while explaining the nature of the "accident" in the case said; inter alia;

> … It was an accident that this noxious thing escaped ……. It was an accident that the thing struck the man on a delicate and tender spot in the corner of his eye.…

Self-Assessment Exercise
Describe what an accident is under the Act.

3.5 Course of Employment

The general rule is that for an employer to be entitled to the insurance benefit provided for the injury suffered by him or her, he or she must prove that the injury, accident or death arose out of and in the course of employment. This is the position of section 40 of the Act.

In the same vein, section 3(1) of the Act contains the criterion governing the payment of compensation. The basic fact is that the injury or death for which compensation is being claimed must have been caused by an accident *arising out of and in the course of employment.* It should be noted that this phrase is not defined in the Act.

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

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

See *ADE SMITH V. ELDER DEMPSTER LINES LTD* [1944] 17 N.L.R.

In *M'NEICE V. SINGER SEWING MACHINE* [1911] S.C.12, where a vehicle overran salesman who was cycling in the course of his duty in a public street; his employers were held liable because it was part of the obligations of the workman that placed him within the zone of special danger.

By the foregoing decision, it is clear that it is not enough that the workman was at his place of work and with the duration of the day's employment when the accident occurred. He must go further and must say, *the accident arose because of something I was doing in the course of my employment or because I was exposed by the nature of my employment to some peculiar risk.* The accident which befell the workman must be *peculiar* or *special*. In the sense that it could only have arisen out of the nature of his employment, that is as a consequence of the plaintiff's employment.

At the time of an accident, a workman to be entitled to compensation, must be discharging his contractual duties or doing something incidental to his employment. A thing is said to be incidental to employment if it is either causally connected to it or expressly or impliedly permitted by the employer.

Summarily, for an accident to have arisen out of and in the course of employment, the employee must have gone outside the sphere of his employment by either:

1. Doing a work he was not engaged to do, or
2. Being in a territory in which he has nothing contractually to do.

Self-Assessment Exercise

What do you understand by the phrase: *Arisen out of and in course of employment?*

3.6 Categories of Compensation

The Act made provisions for four categories of compensation namely;

1. **Compensation in fatal accident cases**

There are the cases where death results from the injury. Section 4 of the Act provides, inter alias that a sum equal to the deceased workman's forty –two month's earning shall be paid to the dependants wholly dependent on his earnings.

2. **Compensation in the case of total permanent incapacity**

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

3. **Compensation in the case of partial permanent incapacity**

This is an incapacity which permanently reduces the workman's pre-accident earning capacity. Section 7 provides, inter alia, that the workman shall be entitled to a percentage of his 54 month's earnings as specified in the second schedule to the Act, being the percentage of the loss of earning capacity caused by that injury.

4. **Compensation in the case of temporary incapacity**

In the case of temporary incapacity, the workman shall be paid as compensation his basic pay for the first six months of his incapacity. Thereafter, if the incapacity continues, he shall be paid half of his basic pay for an additional period of three months, and if the incapacity thereafter continues, he shall be entitled to a quarter of his monthly salary for a succeeding period of fifteen months.

Any such sum paid under this head shall be deducted from any sums eventually paid to the workman as compensation.

The provision of sections 12(1) and (3) of the Act are to the effect that compensation payable under the above categories shall be paid to the court, and any sum so paid shall be paid to the person entitled thereto or be invested or otherwise be dealt with for his benefit in such manner as the court thinks fit. This is subject however, to the provision of section 19 of the Act, which provides that an employer is not entitled to end or diminish any payment which he is bound to pay under the Act.

Self-Assessment Exercise

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

3.7 Agreement as to Compensation

Within the purview of labour law, compensation can be described as a monetary payment made to an injured workman in respect of injury which he has sustained in the course of employment. Such compensation may be as agreed by the employer and the workman or as may be approved by the court.

Section 16(1) of the Act provides the situations and conditions by which the employer and the employee may agree in writing as to the compensation to be paid by the employer. These include:

1. That the compensation agreed upon shall not be less than the amount payable under the provisions of the Act.
2. That where the workman is an illiterate, the agreement shall not be binding against him unless:

- It is endorsed by a certificate of an authorisedlabour officer to the effect that he read over and explained to the workman the terms thereof (and that they were, in appropriate cases, interpreted to him in a language which he understands);
- That the workman appeared fully to understand; and
- Approved of the agreement.

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

1. That the compensation agreed was not in accordance with the provisions of the Act, or
2. That the agreement was entered into under a mistake as to the true nature of the injury, or
3. That the agreement was obtained by fraud, undue influence, misrepresentation or other improper means as would in law, be sufficient ground for avoiding it.

Self-Assessment Exercise

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

3.8 Claiming Compensation

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

- notice of the accident has been given to the employer, by or on behalf of the workman,
- the application for compensation with respect to that accident has been made within six months from the occurrence of the accident causing the injury or in the case of death, within six months from the time of the death.

The failure to give notice or to make an application within six months would however not be a bar to any proceedings for compensation, if the failure to give notice did not prejudice the employer in his defence or there were reasonable grounds for not making an application within six months.

Therefore, once an employer is in receipt of the notice of accident, it is obligatory on him to arrange as soon as reasonably possible to have the workman medically examined free of charge. The examination, under the law, is necessary in order to determine the degree of incapacity suffered and, consequently the liability of the employer.

However, in fatal accident cases, the Act imposes an obligation on the dependants of the deceased workman to give to his employer a medical certificate as to the cause of death.

In the event of any of the foregoing, an employee has twenty-one days from the receipt of notice to reach an agreement, in writing with the injured workman as to the amount payable as compensation. At the expiration of that period, the workman may, in the prescribed manner, make an application for enforcing his claim to compensation to the High Court having jurisdiction in the area in which the accident giving rise to the claim occurred.

Self-Assessment Exercise
How is compensation claimed?

4.0 Conclusion

Apart from the major provisions of the workman's compensation Act relating to the compensation of an injured employee while in the employment of the employer, the provisions of the old fatal accidents laws of the various regions of the country are now harmonized into the Workmen's Compensation Act.

By and large, it is hoped that you will now be better informed of the intents and purposes of the Act, particularly in the area of compensation payable, in case of death or injury.

5.0 Summary

By now, you should be able to:

- define who a workman is
- define who an employer is
- explain how and when an employer is entitled to compensation.
- discern acts that would be regarded as accident
- explain when an accident arises out of and in the course of employment
- mention the various categories of compensation
- mention when and how an agreement as to compensation should be made
- discuss how a claim for compensation is made
- discuss the nature of fatal accidents, and
- define compensation generally.

6.0 Self-Assessment Exercise

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

7.0 References/Further Reading

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