**NINA OMOLU-17/LAW01/234 CARRYOVER**

**LABOR LAW CONTINIOUS ASSESSMENT TEST-LPB 203**

QUESTION:

1. The National Association of Workers in Oil Industry of Nigeria (TUWOIN) had a collective agreement with the Association of Oil Companies of Nigeria (Ogunpa Oil Company is a member) in 2012 which provided *inter alia*that all workers shall be paid a security allowance in view of the rampant kidnapping of oil workers. Madam Aja, a member of TUWOIN and an employee of Ogunpa Oil Company, sued her employer on the basis of the collective agreement for not being paid this allowance. The matter is before Justice Adamu who is not clear as to whether she can sue on a collective agreement. He has asked you as his research assistant to write a legal opinion/advice on whether she can validly sue on it and to consider all the issues involved so that he can make a sound judgment.

The issue present in the scenario given above is determining whether or not the plaintiff can bring an action on a collective agreement. **SEC 48 Trade Dispute Act** clearly defines a collective agreement as any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between - (a) an employer, a group or organizations representing workers or the duly appointed representative of any body of workers, on the one hand; and (b) one or more trade unions or organizations representing workers, or duly appointed representative of any body of workers , on the other hand.

The agreement reached by TUWON and Ogunpa Oil Co. is collective agreement which is of the benefit of the trade workers. Collective agreements are not enforceable in law and are considered as a gentleman’s honor. These agreements can however be enforced by statutes (i) Where the Minister makes an order in respect of a collective agreement that has been submitted to him, then the terms of the agreement are binding on the employers and workers to whom it relates **(SEC 3 (3) Trade Disputes Act)** and (ii) Exercise the exclusive jurisdiction of the National Industrial Court to interpret collective agreement under Section 7(1) (c ) of the NIC Act and **Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010**. Once such interpretation is made by the court, it becomes binding on the parties.

In order for the Minister to make an order, the collective agreement should have been sent to him by the party bringing the action. If the agreement is not submitted the minister will be unable to call an order and the party will have to rely on other options like

1. Contract law: Enforceability can take place through the use of contract law. In this scenario, the agreement was made by a trade union and the employer. The trade union is not a party to the contract of employment. The parties to the contract are the employer and the employee. Doctrine of privity will make a collective agreement unenforceable in this case
2. The trade union acted as agents of the employee: The court would consider the intention of the parties whether the parties intended the agreement to be binding and/or incorporated into the contract of employment of the employees concerned from the moment the agreement was made. A further explanation of this is seen in the case of **CCB (Nig) Ltd v. Okonkwo [2001].** The Trade union did not act as a representative of the employee so the agreement will not be enforceable.

Unless the plaintiff submitted the collective agreement to the minister then the agreement would not be able to be enforced with the use of contract law or trade union representation.

1. On the 5th of January 2020, Mr Olabanjo drove into Esso Petroleum to fill his car tank. Ade one of the attendants at the fuel station beckoned to Mr Olabanjo to come to his own pump to buy fuel. Mr Olabanjo refused and stayed at the other pump, but his car was blocking other cars from going to Ade’s pump. Ade tried to signal to him to move his car but he refused, Ade insulted and made a hand gesture, that was interpreted to mean Mr Olabanjo was crazy. This resulted in a fight, Ade injured Mr Olabanjos left eye, to a point where blood was gushing out. Mr Olabanjo lost his left eye. On the same day, Esso petroleum had a retirement party for one of its directors and all employees were invited. Eunice the attendant who was at the pump where Mr Olabanjo wanted to buy fuel was on the dance floor dancing, when Ade tried to lift her up, in the process she fell and had a serious sprain on her leg. She was in the hospital for 5 months. Mr Olabanjo wants to bring an action against Esso petroleum and Ade, Eunice also wants to know if she can bring an action against Ade and Esso Petroleum. Advise, Mr Olabanjo, Eunice and Esso Petroleum.

The doctrine of vicarious liability imposes strict liability on employers for the faults of their employees. An employer will be held liable for any tort committed by his employee in their line of duty. In the case of in **R.O Iyere V Bendel Feed and Flour Mill Limited (2008), the Supreme Court held that *the general disposition of the law is that an employer is liable for the wrongful acts of his employee authorised by him or for wrongful modes of doing authorised acts, if the act is one which if lawful will fall within the scope of the employee’s employment as being reasonably necessary for the discharge of his duties or the preservation of the employers interests or property or otherwise incidental to the purposes of his employment.***

I advise Mr. Olabanjo to bring an action against Esso petroleum and Ade. Bearing in mind that the employee has primary liability while vicarious liability falls on the employers. Since Ade committed the offence of battery which is a criminal offence, he is liable for an action for battery or grievous harm. Esso petroleum is not liable for the criminal acts of their employee unless they authorized them to do so. Ade was working under the orders of his principal so he his employers are liable. Under **Section 9(2) LA** provides that an employer shall be responsible for the performance of any contact made by any person acting on his behalf.

Eunice who is an employee was carried by Ade, who, in the process, dropped her and she broke her leg. Eunice is advised to bring an action against Ade as the employer, Esso petroleum will not be held liable because the employees were not acting according to their scope of duty. They were not acting on behalf of their employer. In the case of **Joel v. Morison (1834) it was held that “The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master’s implied commands, when driving on his master’s business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master’s business, the master will not be liable.”** Esso petroleum is exonerated of liability and only Ade should an action be brought up against.

Esso Petroleum is advised to give evidence that they discouraged the commission of the crime done by their employer to Mr. Olubanjo. He is also advised to prove that the crime committed does not fall under the general acts that the employee is meant to do. If the company is unable to prove these then they will be held liable for the crime of their employee. An elaboration of this instance is seen in the case of **Lloyd v. Grace, Smith and Co (1912)**