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**COURSE CODE: LPB 203**

**COURSE: LABOUR LAW 1 CONTINUOUS ASSESSMENT**

**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 based on 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.

**Answer**

**Section 48 of the trade disputes act** defines collective agreement as any agreement in writing with regards to settling disputes according to the terms of employment, employees and group of workers or organizational representing workers. Trade unions are not part of a contract of employment. At common law, collective agreements are not enforceable because of privity of contract.

Collective agreements are usually made by trade unions and the one above was made by TUWOIN. They are mad to represent the parties involved and are not included in the contract. TUWOIN made a collective agreement with madam aja’s workplace that all workers shall be paid security allowance due to rampant kidnapping.

The collective agreement must have been enforced for it to be binding on them. Section 3 (3) of the TDA provides that when the minister makes an order in respect of an agreement that has been submitted to him, it becomes binding on them.

Collective agreement can also be enforced by the exercised of exclusive jurisdiction of the NIC under section 7(1)(C)(c ) NIC act and section 254(C) CFRN third alteration act.

In the case of UBN v Edet, the court stated that the collective agreement should not create any legally enforceable contractual obligation by individual employees. No individual employee can claim to be a party to that agreement. In other words, no privity of contract can arise between an individual employee and employer by virtue of that agreement

Whenever an employer breaches the agreement, resort could only be had, if at all no negotiation between the trade union and the employer, and ultimately, to a strike action should the need arise and it be appropriate.

In conclusion, It is not for any individual employee to found a cause of action when he is not a party, even if the contract is made for his/her benefit and purports to give him the right to sue upon it.

**Question 2.**

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

**Answer**

This issue above is one that borders on vicarious liability. Vicarious liability is a doctrine that imposes strict liability on employers for the wrongdoings of their employees. Generally, an employer will be held liable for any tort committed while an employee is conducting their duties.

The general law on vicarious liability 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. This was stated in the case of ***Iyere v Bendel Feed & flour mill.***

My advice to Mr. Olabanjo would be to seek legal action against Esso petroleum. Due to Ade’s show of gross misconduct to a customer it sparked a fight. Leaving Mr Olabanjo with one eye. Insulting a customer & starting fights does not fall within the general class of work that Ade (the servant) was employed to do.

Ade departed from his general class of duties by not going to tell Mr. Olabanjo formally to move his car because it was blocking others from getting to his pump. Instead, he signaled to Mr. Olabanjo and when the signal was not heeded to, he turned to insulting a client.

If Mr. Olabanjo seeks legal action, only Ade will be liable. It must be examined whether the act falls within the general class of work the servant is employed to do. So, where the prohibited act falls within the general class of work the servant is employed to do, the employer may not be liable. In this case, Esso petroleum will not be liable because in the case of ***Joel v Morrison***, it was stated 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.”

Ade was going out of his way to insult Mr. Olabanjo which is against Esso petroleum’s implied commands and this was not at all on the master’s business. The justification for Mr. Olabanjo would be that since Ade derives an economic benefit from their employees’ work, they should bear any related burdens. Also, he should be able to seek compensation from a source better placed financially than the employee who committed the tort, which is Esso petroleum.

Eunice’s case is like that of ***Iyere v BFFM ltd.*** In this case the Appellant was employed as silo attendant by the respondent who was assigned, in the course of his employment, to the duty operator to discharge a truck of fish mill. He noticed frequent stoppage in the intake of materials and reported this to the duty operator, who confirmed that he was aware of the problem. The duty operator sent him to clear the conveyor or running machine to check the constant stoppage of intake of materials by the machine. He left the switch operator at the switch room and went down the mill below to clear the stoppage

While there, the switch operator started running the machine without clarifying or getting a feedback from the appellant. The right arm of the appellant was caught in the machine and damaged hence it was operated upon. This led to a permanent deformity of his right arm. The appellant’s appointment was later terminated. He brought this action claiming that the alleged termination of his appointment was illegal and asked for special and general damages against the respondent.

The trial court and court of appeal had dismissed his claims on the ground that he did not join the duty operator who was primarily responsible for the accident but only sued the company which was vicariously liable. The Supreme Court in allowing the appeal held that failure of the appellant to join the duty operator could not be a ground for dismissing the appeal because if such a situation is allowed, it would be difficult for most claims based on vicarious liabilities to be successfully prosecuted since all the principals need to do would be to ensure that the servants involved are made unavailable for the purpose of being joined in a contemplated action.

Except in Eunice’s case it was a matter of negligence by Ade. If Esso petroleum had prohibited the act, Ade would not have thought of doing it. So, in Eunice’s case, Esso petroleum can be held liable.

In conclusion, my Advice to Esso petroleum would be to put in place measures to avoid such from re-occurring. The imposition of strict liability acts would act as an incentive encouraging employers not only to maintain standards of good practice and to reduce negligence when making appointments but to explore ways of going beyond those set, by the standard of a reasonable person. They would also be able to curb this by screening employees first. Also though imaginative and efficient administration and supervision.