**ARICHOKE FEKE DIVINE**

**18/LAW01/045**

**LABOUR LAW**

**QUESTION 1**

This scenario borders on Collective Agreement and its enforceability

What is a Collective Agreement? According to section 48 Trade Disputes act Any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between;

1. Employers and an organization representing workers or group of workers
2. Employers and one or more trade unions

An agreement in writing regarding working conditions and terms of employment concluded between an organization of employers and an organization representing workers- section 91 Labor act

The most important purpose of collective agreement is to improve the welfare of its members and once this purpose cannot be served it becomes useless. Collective Agreements are usually made by trade unions representing the parties involved and are not included in the contract.

The General principle of Industrial Relations is the right of employees and employers to negotiate the terms of their agreement; this can be done on a collective basis and on behalf of the workers once the initial contract has been signed.

Ae collective agreements enforceable in a court of law? Can an employee sue his employer based on the terms of a collective agreement which was signed by the employer and a trade union? At common law, collective agreement is not enforceable I law, they are considered a gentleman’s agreement.

They can however be enforced in the following ways;

**Enforcement through Statutes**

* When the minister makes and order in respect of an agreement that has been submitted to him, it becomes binding on the employers and workers to whom it relates section 3(3) Trade Disputes act
* Exclusive Jurisdiction of the National Industrial Court to interpret collective agreement under section 7(1) (c) NIC act and section 254 CFRN (third alteration) act 2010. Once such alteration is made by the NIC it becomes binding on the parties.

 UBN v. Edet (1993) if the agreement was a gratuitous act by the employer with no consideration by the employees, it is also enforceable

**The Trade Union acts as an Agent of the Employee**

The court will consider the intention of the parties n the agreement, where it is shown that the parties intended it to be binding, the court is inclined to enforce a collective agreement even though it was between the employers and their representatives.

Batisen v. John Holt & Co. Where the parties have concluded the basis of the collective agreement the court will not deny the employer the remedy to enforce it. The facts of the case will determine whether such an agreement is enforceable.

Madam Aja cannot sue but she will be advised to take the matter up with TUWOIN, because the agreement was made by TUWOIN acting as her agent and only the agency can strike up action for a breach of the agreement

Madam Aja should understand that this is a trade dispute case and will be better interpreted in the National Industrial Court, which has the right to enforce the collective agreement.

**QUESTION 2**

This scenario border on vicarious liability.

Vicarious liability is a doctrine in Labor law, that imposes strict liability on employers for the actions of their employees. The act in question must fall within the employee’s employment as being necessary in the discharge of his duties.

The issue here is:

Whether Esso Petroleum will be liable for the actions of Ade even though Ade’s actions are considered criminal offences

Whether Esso Petroleum will be liable for the actions of Ade due in the injury inflicted on another employee (Eunice)

Whether action can be brought against Ade by both Mr. Olabanjo and Eunice

In the first issue, Generally, an employer will be liable for tortious actions committed by his employee in carrying out his duties. But in this case, battery and assault are not tortious actions. Therefore, is Esso Petroleum liable for the crime committed by Ade while carrying out his duties.

In the case of Hawley v. Luminar Leisure ltd (2006) where a steward hired to keep order at the nightclub physically assaulted an individual in the course of his employment causing him serious brain damage. It was held that the owner of the club was vicariously liable for the actions of the steward.

The General rule is that a person cannot be held liable for the crime of another person, therefore a master is not liable for the crime of his servant. But there are exceptions to this rule:

1. The servant committed the action trying to execute the orders of his master
2. The master knew the servant was committing the crime

In this present scenario, Ade committed the action while trying to carry out his duties which involves ensuring a smooth flow of sales. Like in the case of Hawley v. Luminar Leisure ltd, Esso Petroleum will be held liable for Ade’s actions.

It is suggested that as an employer derives economic benefit for the actions of his employee, they should bear any related burdens.

In the second issue, will Esso Petroleum be held liable for the actions of Ade in injuring Eunice.

The question to be asked is, Was Ade carrying out his employment duties by lifting Eunice up during the retirement party?

In the case of Igbokwe v. UCH Board of Management, where a patient fell to his death from the 4th floor of UCH. The hospital was held liable due to negligence of the medical staff on duty.

In the application of this to our scenario, the only person guilty of being Negligent was Ade, but due to the sole fact that he was carrying out his employment duties by lifting Eunice means that Esso Petroleum cannot be held liable for his actions.

Therefore, action cannot be brought against Esso Petroleum for the negligent actions of Ade because he was not carrying out his employment duties.

In the third issue, can both parties bring action against Esso Petroleum and Ade.

Mr. Olabanjo can bring an action against Esso Petroleum for the actions of one of their employees whilst he was carrying out his duty, Mr. Olabanjo will be fairly compensated by Esso Petroleum for the injury suffered.

Eunice cannot bring an action against Esso Petroleum because, Ade wasn’t carrying out his employment duties by lifting her up. The only person she can bring action against is Ade and for negligence which led to bodily harm. Then the court will compel Ade to pay Eunice a sum that he can afford for injuring her.

My Advice to Esso Petroleum is that, they would have to pay a particular amount to Mr. Olabanjo for the injury suffered, and they can deduct a particular sum from Ade’s salary to cover the cost. But in regard to Eunice’s injury, they had no part in it and cannot be sued for the negligence of an employee to another employee whilst he wasn’t on duty, the case would be different if Ade had injured Eunice while carrying out his duty like the case of Iyere v. Bendel Feed and Flour ltd, where an employee injured another employee while carrying out his duties