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**QUESTION 1**

This question borders on the enforceability of collective agreements. It requires me to discuss on the options available to any person seeking to enforce a collective agreement which contains terms and conditions of employment of a group of workers. The matter before Justice Adamu is brought by a worker, Madam Aja, who is a member of TUWOIN, a trade union for workers in her industry. She is seeking to enforce a term of a collective agreement which provides security allowance for her and her fellow workers.

A collective agreement is defined by **section 91 of the Labour Act, Cap L1, LFN 2004** as an agreement in writing regarding working conditions and terms of employment concluded between an organisation of workers or an organisation representing workers or an assoociation of such organizations, on the one part, and an organization of employers or an organization representing employers or an association of such organizations on the other part.

The question for determination here is whether collective agreements are enforceable in a court of law in Nigeria, that is, whether a woker can sue his employer on the basis of terms contained in a collective agreement which was concluded by his trade union and consented to by his employer. It should be noted that at common law, collective agreements are not enforceable. Rather, they are considered an agreement which is binding in honour only, such that they can be kept by the parties if they so wish. However, there are certain ways that such agreements could be made enforceable.

Enforcement Through Statutes

This is one of the common ways through which collective agreements have been made enforceable in Nigeria. A statute could provide for the agreement to be enforced upon the fulfilment of certain conditions. One statute that provides for its enforcement is the **trade Disputes Act, Cap T8, LFN 2004. Section 3(3) of the Act** empowers the Minister of the Federation who has the responsibility for the welfare of labour in Nigeria, to make an order in respect of a collective agreement submitted to him. This order makes the collective agreement submitted in accordance with **sectio 3(1) and (2) of the Act,** to be binding on the workers and employers to whom the agreement relates. However, an order can only be made when parties submit a collective agreement relating to the settlement of disputes in the manner prescribed by the Act.

The National Industrial Court is also vested with jurisdiction by virtue of **section 254C(j)(i) of the CFRN 1999 (as amended),** to determine any issue relating to the interpretation and application of any collective agreement. Also, **section 7(1)(c)(i) of the National Industrial Court Act, 2006** vests the NIC with jurisdiction to determine any question relating to the interpretation of any collective agreement. However, this jurisdiction is exercisable only where a matter has been brought before the court or the court makes an award or order with respect to a trade dispute referred to it by the Minister as provided under the Trade Disputes Act.

Enforcement Through Contract Law

A collective agreement may be enforced through contract law. However, the challenge with this is the application of the doctrine of privity of contract. This doctrine states that a contract or agreement can only be enforced by parties to it. This makes it difficult to enforce a collective agreement through contract law because the agreement is between a trade union representing the workers and the respective employer(s). The trade union is also not a party to the initial contract of employment between the worker and employer. Moresoo, where the agreement is but a gratuitious act by the employer and the woker has supplied no consideration, the agreement is unenforceable. In the case of **Union Bank v Edet,** the court held that only parties to a contract may enforce it. Also, it stated that the service agreement between the worker and employer are the only document to be looked at to determine the entitlements of an employee.

Where the Trade Union acts as an Agent of the Employee

If the intention of the parties when they entered into the contract was to make the agreement binding on them or if the agreement is expressly or impliedly incorporated into the contract of employment of the individual employees from the moment it was concluded, the court may enforce it. Also, if it can be shown from the circumstances that the parties worked on the basis of that agreement, the court will enforce it in the favour of any party seeking a remedy under the agreement. This was the case in **Batissen v John Holt & Co.** where the court held that if parties act on the terms of a collective agreement, the court would not deny a worker of a remedy necessary to enforce it. Also, in **CCB v Okonkwo,** the court held since the appellant dismissed the respondent on the authority of a collective agreement, it could not deny that it formed part of the conditions of service of the respondent.

Justice Adamu should note, however, that the courts usually examine the facts of each case to determine if a collective agreement is enforceable by a worker who is a member of the trade union that negotiated the agreement. So, if Madam Aja can prove that both she and her employer acted did any of the above, the agreement can be enforced.

QUESTION 2

This case borders on the vicarious liability of workers for the wrongful acts of their employees. Vicarious liability is a doctrine that imposes strict liability on employers for the wrongs of their workers. It is generally known that an employer will be made liable for tortious acts committed by its employees in the course of their employment. It must be noted that employers are generally liable, whether such employers are natural persons or other juristic persons such as incorporated companies.

Another point to note is that in law, a criminal and civil action can arise from a single act. That is, a single conduct can constitute both a crime and a civil wrong. While it is generally acceptable that an employer is liable for torts, we should note that an employer can be made liable for crimes committed by his employees too, where certain facts are proved. This general liability of the employer was well-summarised in the case of **R.O. Iyere v Vendel Feed and Flour Mill limited.** It was stated that an employer is liable for wrongful acts of the employee authorised by him or for wrongful ways of carrying out 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 employer’s interests or property or any other thing incidental to the purpose of his employment. However, the employer will not be liable where the act even if it had been lawful, would not have fallen within the scope of the authority of the employee and it is not capable of being ratified nor was it actually ratified by the employer.

An employer’s vicarious liability may arise from criminal actions and tortious actions of an employee or from contract. In the course of carrying out his duty as an attendant at the fuel station, he insulted and assaulted Mr. Olabanjo. This assault also caused permanent physical injury to Mr. Olabanjo, as he lost his eye. This act of Mr. Ade constitutes both a crime and a tort under the **Criminal Code** and other relevant laws in Nigeria. The question which arises here is whether Esso Petroleum, Ade’s employer, will be liable for the injury suffered by Mr. Olabanjo. The answer is yes.

However, certain facts must be proved. The courts will always consider whether there is actually a master-servant relationship, that is, whether the employee was a servant of the employer. It will also consider if the employer had expressly or impliedly authorised the act, if the act would normally have fallen within the scope of the employee’s authority or being incidental to the discharge of his duties and if the act has been or is likely to be ratified by the employer.

In this case, Ade is clearly a servant of Esso Petroleum. The test for this is the level of control the employer has over him. In **Hawley v Luminar Leisure,** the employer was held liable for the action of the door steward because it controlled him in the way he carried out his duty. Thus, Esso Petroleum will be liable also since it had control over Ade’s actions.

The act was also carried out in the course of his employment. This is because he assaulted a customer while he was carrying out the duty of an attendant. An attendant is normally also responsible for the flow of traffic in and out of a fuel station. Mr. Olabanjo restricted other customers from accessing the fuel pumps, so the attempt by Ade to clear the way was an authorised act. In **Lloyd v Grace, Smith and Co.,** the employer was held liable for the fraud committed by the managing clerk because it was done in the course of business which the servant was authorised to transact on behalf of his principal. Ade was authorised to act on the employer’s behalf, so the act was within the scope of his authority and was necessary for him to carry out his duty. So, Esso Petroleum is liable for his actions. It was an authorised act done in a wrongful manner. In **London County Council v Catteroles** the employer was held liable for an authorised act done of moving cars at the garage, done in a wrongful manner.

However, what is not clear is whether the employer ratified his conduct. It can be presumed, however, that the employer was aware of the act and did nothing to discourage the action since Ade was still allowed to attend the party that same day. Esso petroleum ought reasonably to know that Ade committed a crime while carrying out his duties. SO, Esso petroleum will be liable unless it can give other evidence to show that it discouraged commission of the crime except it can prove that is expressly prohibited the act and this prohibition is known to the third party, in this case, Mr. Olabanjo. Under common law, the employer has a duty to supervise and monitor work done by his servants. Esso Petroleum failed to do this.

So, Mr. Olabanjo can bring a civil action for assault resulting in physical injury against Esso Petroleum and Ade joint tort-feasors. The employer is vicariously liable while Ade is primarily liable.

With reference to Eunice who is also an employee of Esso Petroleum, she was injured by an action of Ade, an employee of Esso petroleum. This was the case in **R.O. Iyere v BFFM Ltd.** where the plaintiff was injured by the negligent conduct of the switch operator in the course of employment, which resulted in permanent deformity of his hand. The court held his dismissal to be wrongful and also the respondent liable for damages due to his injury. The tort in this instance was committed at the party. This was a party he was entitled to attend as an employee of Esso Petroleum: it was incidental to his employment. Thus, the employer will be held liable for the injury to her leg. She may also bring an action against Esso Petroleum and Ade as joint tort-feasors. However, failure to join Ade as a party will not preclude Eunice from the remedy due her or the vicarious liability of Esso Petroleum as was stated in **Jamarkani Transport v Wullemotu Abeke.**

As I have earlier stated, unless Esso Petroleum can prove it had no knowledge of the crime or tort of Ade with respect to Mr. Olabanjo and Eunice, or that is expressly prohibited the acts to the knowledge of the third parties or that he had no knowledge of the act nor did it condone it, it will be vicariously liable. The justification for this is because the employer set the whole thing in motion by employing the worker as was stated in **Dunkan v FindLater.** So, he will be liable. He also has an economic benefit form the work carried out by the employee. He is also responsible for the control of the work.