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MATRIC NO: 18/LAW01/083

QUESTION 1

The above scenario borders on collectictive agreements. By virtue of section 48 Trade Dispute Act, collective agreement is any any agreement in writing with regards to settling disputes in relation to terms of employment and physical condition of work concluded between a) an employer and group or organisation representing workers or the duly appointed representative of any body of workers, on the one hand; and b) one or more trade unions or organisations representing workers or duly appointed representative of any body of workers, on the other hand.

A collective agreement is reached by collective bargaining, which is negotiations between an employer and employees. The reasons for collective bargaining are as follows:

a improves welfare of its members

b peaceful process

c it has more bargaining power of worker

d to avoid favouritism, unfairness, etc.

In the above scenario, the employees trade union has entered into a trade union with her employers.

At common law, collective agreements are not enforceable because of the doctrine of privity of contract- a person who is not a party to a contract cannot yield the benefits of the agreement and cannot bring an action against the contract because they were not present when the parties entered into the contract. A collective agreement is usually between an employee's trade union and his or her employer and because of this the employee cannot fully rely on such agreement unless an action has been taken by the employers to show that the agreement is binding maybe by passing a circular of if the worker has been working on the basis of the collective agreement. In National Coal Board v Galley, it was held that where a worker worked on the basis of a collective agreement the court would not deny a worker a remedy to enforce it. Also, the case of Batison v Join Holt relies on this same principle.

A collective agreement can become enforceable by:

1 Enforcement of statutes ( the minister): section 3 Trade Dispute Act- if an order is made by the minister on the collective agreements submitted it becomes binding.

2 Exercise of exclusive jurisdiction of the National Industrial court- the National Industrial Court has jurisdiction to interpret any collective agreement Section 7(1)c NIC Act.

3 Taking an action that shows that you are bound by the agreement.

In the above scenario, the employers did not take any action to show they were bound by the collective agreement and the employee had not been working on the basis of the collective agreement so the employee cannot rely on the collective agreement. This was established in the case of UBN v Edet where the employee relied on a collective agreement between her employers and her trade union, it was held that compliance with such agreements are not justiciable.

In conclusion, the employers did not make the agreement binding therefore the employee cannot rely on it.

QUESTION 2

This scenario borders on vicarious liability. Vicarious liability is a doctrine that imposes strict liability for the wrong doings of their employees.

The general principles of vicarious liability were re-stated in the case of Iyere v Bendel Feed and Flour Mill where the Supreme Court held that:

"An employer is liable for the wrongful acts of his employee authorised by him and for wrongful modes of doing authorised acts.

It is important to note that for an employer to be liable, the act done must t be in the course of employment of the worker because it is opposed to common sense that someone else pays for another man's wrong. In the case of Odebunmi v Adullahi, the claimed he did not know the driver, was not the owner of the truck and did not give any instructions for any truck to be driven so he cannot be held liable.

Also, the liablity of an employer is derivative of the employees liability to the employer . The court also looks at the level of control exercised by the employer to determine the actual employer because a person may have two employers.

In the case of Hawley v Luminar leisure, a question was raised as to who was the actual employer of the bouncer who had committed a tortious act. Was it the security agency or the night club where the act was carried out. The night club was held to be the employer because they were in the capacity to prevent the steward's act , they were held liable.

Vicarious liability of an employer can arise through:

a criminal acts of the employee

b tortious acts of the employee

c contract

CRIME

It is a general rule that a person cannot be held liable for the crimes of another in essence the master cannot be held liable for the crime of his employee. There are of course exceptions to this,

▪ if the crime was done in execution of orders of the employer

▪ if the employer is aware of the crime

▪ if the crime is carried out in the course of employment

For an employer to be exonerated of all charges he must prove he did not know about the crimes and if he knew that he tried to stop it.

In the case of Board of Custom & Excise v Agu & Chika Brothers, the company was held liable for knowingly importing prohibited goods into the country even though the offence was committed by the company's agent.

Also, in the case of Lloyd v Grace, Smith & ors, the employers were held liable for the employee's crime of fraud towards an old widow.

TORT

This wrongful act or an infringement of right leading to legal liability.

In Igbokwe v UCH Board of Management, a hospital's board of management were held liable for the negligence of the medical staff on duty the day an in patient fell to his death.

CONTRACT

On entering into a contract of employment, the employer has also accepted to be liable for his employee's wrongful acts because it is an employer's duty provide indemnity for his workers.

In the case of prohibition, if the act falls within the general class of work the servant is employed to do, the employer may still be liable unless the prohibition is express and known to the third party.

In the scenario, Ade has committed a crime of assault towards Mr. Olabanjo in the course of his employment. In a similar case of Hawley v Luminar Leisure, the defendant's worker committed a crime of assault towards a customer who brought an action and the night club was held liable for the employee's wrongful act. Mr. Olanbajo can bring an action against Esso Petroleum and its employee Ade.

In the case Ade and Eunice, Ade has committed a tortious act against Eunice. This happened at a party and has nothing to do with employment because it was more of an informal setting and were doing any form work there. They were invited for a party and they attended so Ade's misconduct cannot be pinned on his employer because it was not done in the course of employment. This principle is established in Odebunmi v Abdullahi- for an employer to be liable the act must be done carrying out a work related activity. Well, Eunice can sue Ade for damages.

In conclusion, Mr. Olabanjo can sue Esso Petroleum for its employee's wrongful act while Eunice cannot bring an action against Esso Petroleum because the wrong act was not done in the course of employment.