**NAME: OKORAFOR UNIQUEFAVOUR C,**

**MATRIC NO: 18/LAW01/177**

1. The given case bothers on enforceability of collective agreement and the main issue here is whether madam Aja can sue based on the collective agreement. Before diving into the main answer for the question one must firstly know the meaning of collective agreement. Section 48 of the Trade Dispute Act defines collective agreement as any agreement in writing for the settlement of dispute between an employer of group of people representing workers and trade unions representing workers or the proper appointed representatives of any body of workers.

At common law collective agreement is assumed to be voluntary and not legally binding and  it is regarded as the gentleman agreement unless it is in writing and it contains a statement that the parties intend the agreement to be legal. However collective agreement can be made enforceable through statutes, for instance in section 3 subsection 3 of the trade dispute act makes provision for the minister to make an order in respect of any collective agreement that has been duly submitted to him and that the terms of the agreement be made binding on the employers and the workers related to the agreement. So basically Madam Aja can sue if the collective agreement was properly submitted to the minister.

Secondly, there is an exclusive jurisdiction of the National industrial court to interpret collective agreement and section 254 (c) of the 1999 constitution third alteration act 2010 makes provision for those exclusive jurisdictions and immediately the interpretation is done by the court the agreement becomes binding on both parties.

However, there are some instances where collective agreement cannot be enforced or in other words there are some situations where one cannot sue on the basis of collective agreement or when the minister does not make an order for the agreement to be binding on the worker and employee and this often happens when the parties for a collective agreement failed to submit copies of the collective agreement to the minster. If such situation occurs in the case of Madam Aja there are some options that can help the agreement be enforced.

For starters, the agreement can be enforced through contract law, however if the agreement was an act done without reason by the employer without consideration by the employee it can make the agreement unenforceable. This is made evident in the case of union bank v. Edet. Also, the trade union can act as an agent of the employee. Also the court will also put into consideration the intention of the parties when the collective agreement was made, the court will consider whether the parties intended to make the collective agreement legally binding and also whether it was included in the contract of employment of the concerned employee from the instance the agreement was made. If it is the proven that the agreement is legally binding and included in the contract of employment the court can enforce a collective agreement or an employee can sue based on a collective agreement this is made evident in the case of Batisen v. john holt where it was held that the court could not deny a worker of a remedy necessary to enforce collective agreement because the parties worked upon the basis of a collective agreement.

In conclusion, the if he collective agreement in the case scenario given above between TUWOIN and Ogunpa oil company has met all the requirement mentioned above by this writer and is able to tackle the issues of unenforceability mention above then Madam Aja can be able to sue her employer on the bases of the collective agreement. Also, the facts of each case determines whether an agreement is enforceable or not especially directly by an employee who belongs to a trade union that bargained the agreement.

2. The given scenario is based in vicarious liability. Firstly, one must know the meaning of vicarious liability and the question to ask is what is vicarious liability? vicarious liability can be defined as a doctrine in Labour law that imposes strict liability on employers for the wrong doings their employees. Basically vicarious liability says that an employer is liable for any action taken by the employee in the process or in the bid to carry out the work description given by the employer. According to the supreme court in R. O Iyere v. Bendel feed "the general disposition of the law is that an employer is liable for the wrongful act of the employee.....if the act is lawful and will fall within the scope of the employees employment duties. Hence Eso petroleum can be held vicariously liable for any act committed by Ade in the course of performing his duties.

  However, before it is confirmed that Eso petroleum liable for the acts of Ade there are some things that need to be put into consideration. Firstly, it must be clearly stated that there is an employer-employee relationship between Eso petroleum and Ade, secondly the act done must have been authorized by Ade, thirdly the act done must have been necessary for the implementation of the  employees duties so that even if it’s done in a wrong manner it will still fall in the line of duty of the employee and lastly that the act can be ratified by the employer.

Furthermore, according in the case of Joel.v. Morison, it was stated that the master is only liable where the servant is acting in the course of is employment .....and his master will be held liable for that but if he was on his own without being in his masters business then the master will not be held liable. Also there are some questions that need to be asked in order to ensure that the master is liable for the actions of his servant, they are; whether the act was authorized by the master, is the act a wrongful way of doing an authorized act, and also whether the act is committed in the course of the employment. If the act is done during the course of employment which is authorized then the master can be held liable, this was made evident in the case of century v. Northern Ireland road transport board.

  As regard to the scenario given, Mr. Olabanjo can sue Eso petroleum for the injuries incurred on him by Eso because, Eso has an employer-employee relationship with the company and he injured Mr. Olabanjo during the course of employment. However, Eunice cannot bring an action against Eso petroleum because at the moment when Ade was trying to help her he was not in the course of employment so the company is not vicariously liable, however she *can* sue Ade personally

In conclusion, the victim of the wrong doing which is Mr. Olabanjo should seek compensation from a source that is better financially placed than Ade which is Eso petroleum so that he can be compensated.