Nigeria Labour Law
STUDY PACK

ON

NIGERIA LABOUR LAW

PROFESSIONAL II
FOREWORD

This third edition of our study pack has been made available for the use of our professional students to assist them in effectively accomplishing their HR professional goal as dictated by the Institute from time to time.

The text is meant not only for Chartered Institute of Personnel Management of Nigeria (CIPM) students, but also for researchers, HR practitioners and organisations embarking on the promotion of human capital development in its entirety. It has therefore been written not only in a manner that users can pass CIPM professional examinations without tears, but also to provide HR professional practitioners further education, learning and development references.

Each chapter in the text has been logically arranged to sufficiently cover all the various sections of this subject in the CIPM examination syllabus in order to enhance systematic learning and understanding of the students. The document, a product of in-depth study and research is both practical and original. We have ensured that topics and sub-topics are based on the syllabus and on contemporary HR best practices.

Although concerted effort has been made to ensure that the text is up to date in matters relating to theories and practice of contemporary issues in HR, we still advise and encourage students to complement the study text with other relevant literature materials because of the elastic scope and dynamics of the HR profession.

Thank you and have a productive preparation as you navigate through the process of becoming a professional in Human Resources Management.

Ajibola Ponnle.
REGISTRAR/CEO
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CHAPTER ONE

INTRODUCTION, HISTORY AND SOURCES OF LABOUR LAW IN NIGERIA

LEARNING OBJECTIVES
At the end of this Chapter, Students/readers should be able to explain, appreciate and apply the following concepts to employment relationship in Nigeria and beyond.

   (i) Historical Overview of Labour Law in Nigeria.
   (ii) Sources of Labour law.
   (iii) The Received Laws.
   (iv) Freedom of Contract/Pacta Sunt Sevanda.
   (v) Guided Intervention, 1968.

1.1 INTRODUCTION
Labour law regulates the relationship that exists between the master and the servant or using the modern day phrase, the employer and the employee. The essence of this regulation is to prevent friction and create a conducive atmosphere for industrial harmony, efficiency of labour, high productivity, profit maximization, socio-economic welfare of workers, economic development which has the multiplier effect of improving the living standards of the larger society.

Modern day labour law and labour agitations in Nigeria originated from colonialism. Thus, the present labour legislation is a product of the common law and English jurisprudence. In essence, the British labour law (i.e. the developments that took place in England and Wales) played vital role in shaping the Nigerian labour law.

Applying Karl Marx\(^1\) development analysis of movement from communalism to feudalism, through feudalism to capitalism and eventually to socialism one may submit that the change that occurred from the feudal system in England to capitalism which placed the means of production and distribution into the hands of the capitalists accounted for the struggle between labour and capital. Therefore, there is a perpetual struggle between labour and capital. Capitalists

\(^1\)See Marxist theory of the State on [www.spunk.org/texts/pubs/maexon](http://www.spunk.org/texts/pubs/maexon), accessed on the 26\(^{th}\) day of January, 2017
want to have the larger part of what is produced, while labour wants to earn a sustainable and adequate living. Thus, the need for the regulation of this relationship is paramount in maintaining industrial harmony. Rosco Pound\(^2\) propounds that law is the instrument of social engineering while Roberto Unger\(^3\) submitted that law is the glue that holds the society together. Labour law thus regulates labour relations in every economy.

1.2 HISTORY OF LABOUR LAW IN NIGERIA

Labour law is the branch of law that regulates industrial relations, employer-employee relations and all aspects connected to terms of employment and conditions of work\(^4\). Labour law is also referred to as “employment law” or “industrial law”, however the law must regulate labour or employment and every matter connected or incidental thereto\(^5\).

The history of industrial relations in Nigeria can be traced back to the colonial era when formal and semi-formal employment relations were established\(^6\) by the British. However, prior to the advent of the colonial masters to the region known as Nigeria today, there has been what looked like employment relationship and

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\(^2\) Pound Rosco ‘An Introduction to the Philosophy of Law’ 1954 (Rev. Ed)


\(^4\) See Agomo C.K. Nigerian Employment and Labour Relations Law and Practice (2011) Concepts Publications (Press Division) Lagos, chapter one. She submitted that labour law is one of the most dynamic and cross-cutting areas of law. As a distinct legal disciples, if has two comparative-industrial employment relations and collective labour relations. It straddles the frontier of human resource management, economics, sociology, psychology, medicine, and politics among others. See also Shadare Oluseyi and Kehinde Bamiwola. The Legal Environment of Industrial Relations in Nigeria (2015), the Faculty of Business Administration, University of Lagos, at page 109.

\(^5\) See Section 254C (1) of the Constitution of the Federal Republic of Nigeria, 1999 as altered. The constitution provides “relating to or connected with labour, employment, trade unions, industrial and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith: See other sub-provisions under section 254C (1) (a) – (m).

which Elias described as cooperative labour system whereby members of cooperative group are paid in service rather than in monetary value.\(^7\)

The advent of the industrial revolution of the 18\(^{th}\) century and the coming of the Europeans into Nigeria introduced wage earning system into Nigeria, thus the master servant relationship or better put; the employer-employee relationship was born\(^8\).

The British came to Nigeria with its modeled industrial practice and laws, and introduced the formal labour relations and employment policies. However, the formal policy was not without its short comings as the Nigerian economic, social, political and traditional structures were maimed. The ever present central issue in industrial relations, which is the struggles between the Nigerian workers and the colonial masters led to the incarceration of Pa Michael Imodu (a labour union leader) and other unionists. There was also the ugly event that happened in 1949 when a coal worker was shot dead at Iva Valley, Enugu just because of agitations for better terms and conditions of their services.

The British administration influenced labour law and movement in Nigeria via some reforms and innovations. For instance, the British administration created the first trade Union in Nigeria in 1912 and later made an Ordinance which allowed for formation of Trade Unions in 1938.

Nigerian Labour Law is based on English Common Law, the principles of equity and statutes of general application that were in force in England on January, 1990\(^9\). The Nigerian civil war that broke out in 1967 influenced the pre-Independence labour movement in Nigeria as it led to a shift from the fundamental common law principles of *laissez faire* doctrine of non-interference


\(^8\)Dafe Otobo (1988) has described the labour policy introduced by the colonial matters as simple and straight forward. See Dafe Otobo, op.cit, "state and Industrial Relations in Nigeria. (Malthouse Press)

\(^9\)Agomo C.K ‘Nigerian Employment and Labour Relations Law and Practice (2011) Concept Publications, Pg 50. See Agomo C.K. op.cit pg 50; the learned Professor and author has submitted that, there was a kind of labour system in Nigeria prior the advert of colonial masters; the system was based on barter system. The system revolved around family and subsistence labour.
to that of guided intervention. Thus, a shift from the strict application of common law principles or rules to statutory provisions was necessary to meet the exigencies of the war time.\(^{10}\) However, the common law principles are still applicable where the statutes are silent or inadequate. For instance the principles of common law in negligence as established in *Donoghue v Stevenson*\(^{11}\) are still very useful in determining the level of duty of care that exists between a master and his/her servant.

### 1.3 SOURCES OF LABOUR LAW

Nigeria legal system has several sources outside the common law and legislation. The diversity in its ethnic groups also contributes to the multi-dimensional nature of the sources of employment and Industrial Relations Laws.

The source of any law refers to ‘the fountain of laws defining or reflecting the general outlook of the legal system.’\(^{12}\) Sources of labour law relate to certain ultimate labour principles from which all other labour relations are derived.\(^{13}\)

The sources of Nigerian Employment/Labour law are as follows:

(a) the received English laws  
(b) Nigerian legislation  
(c) Judicial precedents  
(d) Collective agreements  
(e) Rule of work  
(f) International treaties  
(g) Customary laws/practices  
(h) Opinion of text writers.

#### A) The Received English Laws

English laws have influenced the entire Nigerian legal system (including labour law) and its value system. The received English laws as pointed out by the Supreme Court in *Ibidapo v. Lufthansa Airlines*\(^{14}\) include all the received English laws.

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\(^{10}\)See Agomo C.K op.cit pg 51. This paradigm shift from the strict application of common law principles to statutory provisions was made possible by the guided intervention of 1968.  

\(^{11}\)(1932) AC 562, HL  


\(^{13}\)K. Eso “Is there a Nigerian Grundnorm?” (Lecture delivered at the First Justice Idigbe Memorial Lecture, University of Benin, 31\(^{st}\) January, 1985) p.5.  

\(^{14}\)[1997]4 NWLR 124
laws, multilateral and bilateral agreements concluded and extended to Nigeria, unless, expressly repealed or declared invalid by a court of law or tribunal established by law, remain in force subject to the provision of section 315(1) of the constitution which is in existing laws.\textsuperscript{15}

The Nigerian labour law is based on the English common law,\textsuperscript{16} which is the common law of England, the principles of Equity\textsuperscript{17} and statutes of general application that were in force in England in January 1, 1900. These statutes were made applicable to Nigeria as a colony\textsuperscript{18} or colonial administration of England.\textsuperscript{19} The history of labour agitation may not be complete without reference to the feudal system or structure that existed between the masters and serfs in a typical agrarian economy when farming was the common form of paid employment, in the United Kingdom. Thus, the colonial ties between Nigeria and England helped in developing the Nigerian labour law through most of the received English laws. John Asein has submitted that “Nigeria has a body of English laws imposed on it by its erstwhile colonial masters”.

This is usually referred to as Received English Law since it is not all English laws that are necessarily applicable in Nigeria. The first reception clause was contained in Ordinance No.3 of 1863, which enacted that:

\begin{quote}
\textit{“All laws and statutes which were enforced within the realm of England on the first day of January, 1900, not being inconsistent with any ordinance in force in the colony, or with any rule made in}
\end{quote}

\textsuperscript{15} J.O. Asein, op.cit. p.98
\textsuperscript{16} Most common law principles have been modified by statutes, the constitution of Nations, international treaties and conventions and latest judicial pronouncements for instance, the principle that he who hires can fire with or without adducing any reason has been modified by Article 4 of the International Labour Organization Convention (ILO) on termination of Employment, 1958, see also Kehinde H. Bamiwola, ‘Human Rights and Employment Discrimination; A Comparative Examination of Equal job opportunities; (2010) published by the ILO – www.ILO.org.
\textsuperscript{17} See section 15 of the National Industrial Court of Nigeria Act, 2006 on the principles of equity
\textsuperscript{18} In 1906, the Northern Protectorate the southern Protectorate and Lagos colony were all merged together to became a single unit which was later amalgamated to be known as Nigeria in 1914.
\textsuperscript{19} The Berlin Conference of 1884-1885 gave Nigeria, Ghana, Gambia and Sierra-Leone to England for colonialization. Frances, Portugal, Germany and Spain took their colonial territories also
pursuance of any such ordinance, should be deemed and taken to be in force in the colony and should be applied in the administration of justice, so far as local circumstances would permit.\textsuperscript{20}

When the Supreme Court Ordinance of 1876 was enacted, the reference date was shifted backward to July 24, 1874, that of the Protectorate of Northern Nigerian was enacted in 1900. The colony and Protectorate of Southern Nigeria received English law consists of the English Common Law, the Doctrines of Equity and Statutes of General Application that were in force in England on January 1, 1900 which were made applicable to Nigeria as a colonial territory of England. The courts were empowered to administer, ascertain and apply those statutes that meet the laid down criteria for application under the general provision.\textsuperscript{21} This group of received English law i.e. Statute of General Application (herein referred to as SOGA ) does not apply in states of old Western region by virtue of the law of England (application) Law of 1959.\textsuperscript{22}

Emiola\textsuperscript{23} opined that “until quite recently legislation such as Fatal Accident Act 1846-64, the Factory and Workshop Act 1891-5, the Friendly Societies Act 1896, the Conciliation Act 1895 which shaped the present course of industrial activities in England – were presumed to apply in Nigeria. The basis for this assertion was laid down in Lawal & Ors v. Younan & Ors,\textsuperscript{24} Koney V. Union Trading Co.\textsuperscript{25}, Green v. Owo.\textsuperscript{26}

It is submitted that, the fact cannot be denied that majority of Nigerian legislation have their sources in most English legislation. The case of Ibidapo v. Lufthansa\textsuperscript{27} airlines emphasized the content and context of the received England laws which include multilateral, bilateral agreements concluded and extended to Nigeria, 


\textsuperscript{21}Asein J.O. op cit

\textsuperscript{22} Asein J.O Ibid. See also Commercial Law in Nigeria, Faculty of Law, University of Lagos publication, edited by E.O. Akanki


\textsuperscript{24}(1961) 1 All N.L.R 245

\textsuperscript{25}(1957)2 FSC 74

\textsuperscript{26}(1997) 4 NWLR 124

\textsuperscript{27}supra
unless expressly repealed or declared invalid by a Court of law or tribunal established by law, such received English law remains in force subject to the provisions of section 315(1) of the Constitution of Nigeria 1999 as amended. This provision recognizes all existing laws prior to the promulgation of the constitution which is the *grundnorm* of all laws.

It is trite that where there is “conflict between the received English laws and local labour legislation, local labour legislation will prevail over the former. However, with the new amendment to the 1999 Constitution by the Third Alteration Act 2010, it is doubtful whether International Labour Conventions such as International Labour Organization (ILO) Conventions will not have priority over local legislation”\(^{28}\).

As earlier stated the received English laws consist of common law and doctrines of equity. Common law is that part of the law of England that was formulated, developed or administered by the old common law courts.\(^{29}\) Common law can be described as decisions of his (her) majesty courts based on the prevailing customs and practices of the generality of the people and designed to meet the demand and challenges of changing situations.\(^{30}\)

The common law employment relations derive its principles from the common law, which is the basis on master and servant relationship.\(^{31}\) In *V.O.M. Ltd v. Duara Ltd*\(^ {32}\), the Court of Appeal held that, common law right of master to dismiss the servant is a well-established principle that, ordinarily a master is entitled to terminate his servants’ employment for good or bad reasons or for no reason at all.\(^ {33}\) However, this position has been modified. The details of the modification shall be discovered in chapter four.

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\(^{28}\) See section 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999 as altered.

\(^{29}\) The old common law courts comprise; the Court of Exchequer, the Court of Common Pleas and the Court of Kings (or Queen’s) Bench.

\(^{30}\) J.O. Asein op.cit. p.104

\(^{31}\) Many judicial decisions in Nigeria are based on the common law principles; the authorities include Isievwere v. NEPA [2002]13 NWLR (Pt 784)417; L.C.R.I. v. Mohammed [2005]11 NWLR (Pt 935) CA; Omojuyigbe v. NIPOST [2010]24 WRN, CA.

\(^{32}\) (1996)8 NWLR (Pt.468) 601

\(^{33}\) See *Union Bank V Ogboh*
It is a well-established principle that where legislation regulate relationships in industrial and labour issues, common law rules will not prevail. In the absence of legislative pronouncements, common law rules apply.

(B) Nigerian Legislation
The Nigerian Constitution empowers the National Assembly and State Assembly of each state of the federation to make laws for the good governance of the state. A number of legislation has been passed by the National Assembly. These include the Labour Act, Trade Dispute Act, National Industrial Court Act, the Employees Compensation Act, Trade Union Act, and the Pension Reform Act.

Hierarchically, Nigerian legislation supersedes all other laws apart from the constitution which itself is the source of legislative power of the law makers. Thus, employment and industrial relations are mostly governed by some of the above mentioned enactments. Apart from major labour related legislation, other enactments such as Universities’ Acts, The Evidence Act, and High Court Rules etc are also part

34 CFRN (as amended) in its section 4, provides for the legislative powers of both the National Assembly and State Assembly
35 In AG Ondo V AG Fed. (2002)6 SCNJ, it was held that, States have been interpreted to mean Federal, States and Local Governments. See Seyi Shadare ed. Op.cit
36 LFN 1990
37 The following judicial authorities have established the importance of legislation as a source of Labour and Industrial Relations; Olaniyan v University of Lagos (1985) 2 NWLR (A 9) 599, Essien v. University of Calabar [1990]3 NWLR (Pt 140) 605; NURTN v. Ogbodo [1998]2 NWLR (Pt 537) 189; Obeta v. Okpe [1996] NWLR (Pt 473) 490; Obanleye v. Afro. Cont Nig. Ltd [1996] 7 NWLR (Pt 458) 29; Akinsanya v. Longman (19976)3 NWLR (Pt 436) 306; Ebo v. NTA [1996]4 NWLR (Pt 442) 312; In Nwalhoba v. Dumez (Nig) Ltd [2004]3 NWLR (Pt 861 461, Section 7(1) Labour Act was considered as the approximate legislation. In Adetona v. Edet [2004] 16 NWLR (Pt 894)338, section 26 of the repealed Workman Compensation Act was considered
39 Evidence Act, 2011
40 In Nigeria Tobacco v. Ltd Agunnanna [1995] 4 NWLR (Pt 397 541, Supreme Court in determining the appeal, considered the provision of section 28, and 30 of the High Court Law, Cap 49, Laws of Northern Nigeria, 1963 and order 8, rule 2(6) of the Supreme Court Rules 1985.
41 In UNTHMB V. Nnoli [1994]8 NWLR (Pt 363)376, section 9(1) of the University of Nigeria Teaching Hospital Management Board Decree No. 10 of 1985 was considered; In Odiase v. Auchi Polytechnic [1998]4 NWLR (Pt 546) 477, The Court of Appeal considered section 26(1) of the Auchi Polytechnic Law, Cap. 11, Laws of defunct Bendel State of Nigeria, applicable in Edo as the statute, which govern the master/servant relationship.
of the legislations that provide guiding principles to industrial and employment relations.

(C) Judicial Precedents

By virtue of section 6 of the Nigerian Constitution,⁴² 1999 as amended “The judicial powers of the federation shall be vested in the courts to which this section relates, being court established for the federation”. Decisions reached by the established courts form precedents for lower courts to follow. Section 6(5) lists courts which are considered as superior court of records.⁴³

Precedent is ‘an earlier happening decision, etc, taken as an example or rule for what comes later.’⁴⁴ Several decided cases of the Supreme Court and Court of Appeal have binding effects on lower courts which have jurisdiction over labour matters.

The National Industrial Court of Nigeria has also held that it will be bound by its previous decision unless such adherence will lead to miscarriage of justice and that the decision of NIC is final except in questions of fundamental rights.⁴⁵ However, NIC may depart from its previous decision if a party shows different cause for such departure. The court will only depart from its previous decisions for germane and compelling reasons.⁴⁶

Judicial precedent is a source of Nigerian labour law; however, distinction must be made between a decision reached in a foreign jurisdiction and the one reached under the Nigerian legal system. The former will only have persuasive effect.

⁴² CFN 1999 as amended
⁴⁵ In Joy Maskew & Ors v. Tidex Nig. Ltd, unreported Suit No. NIC/IM/98, delivered on June 8, 2009, it has been held that by virtue of section 9(2) of NIC Act 2006, an appeal from NIC shall lie only as of right to the Court of Appeal and only on question of fundamental rights as contained in chapter IV of the Constitution of the Federal Republic of Nigeria 1999; In Association of Senior Civil Servant of Nigeria v. National Orientation Agency & Fed. Ministry of Information [2005]3 NWLR (Pt 7) NIC, it has been held inter-alia that the National Industrial Court is bound by its previous rulings or decision especially when the facts are same.
⁴⁶ See Joy Maskew & Ord v. Tidex (supra)
⁴⁷ See Association of Senior Civil Servants of Nigeria v. National Orientation Agency & Fed. Min. of Information (supra)
while the latter will have binding effect on lower courts. It is the ratio decidendi\(^48\) that is the core factor of judicial precedents.

(D) Collective Agreement

In *Union Bank of Nigeria v. Edet*\(^49\) and *ACB v.Nsibike*,\(^50\) it has been held that “collective agreements made between one or more trade union on the side and one or more employers’ association on the other side are not generally intended to create legal relation except in the case of certain public boards or corporation, they are at least, a gentleman’s agreement, an extra-legal document totally devoid of sanction. They are products of trade unionists’ pressure.

Notwithstanding this judicial pronouncement, it has been observed that collective agreements also regulate industrial and labour relations. Plethora of judicial authorities attest to this principle of collective bargaining.\(^51\)

In *Afribank (Nig) Plc v Kunle Osisanya*,\(^52\) it was held that collective agreement will be enforceable where they have been adopted as forming part of the terms of employment. Collective agreements appear from all indications to be a vital source of Nigerian Industrial and Labour Relations.

(E) Rule of Work/Service Rules

Rule of work contains terms and conditions of employment. In some jurisdictions, the terms are contained in the employee Handbooks. Certain relationships are regulated by this rule. For instance under the Factories Act\(^53\), the rules of safety must be complied with by both the employer who provides the work-safety

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\(^{48}\)Legal precedents are built on ratio decidendi which literally means reason for the decision; where there is a dissenting judgment, it is the majority and not the dissenting judgment that must be considered as the biding decision or ratio decidendi.

\(^{49}\)1993]4 NWLR 288

\(^{50}\)1995]8 NWLR (Pt 416) 725

\(^{51}\)See the following cases; *ACB v Nsibikee* (supra) *Cooperative & Commercial Bank (Nig) Ltd & Anor v. Kaneth C. Okonkwo* [2005]3 NWLR (Pt 7)109 [2001]15 NWLR (Pt 735)114. In *Daodu v. UBA* [2004] 29 WRN 53, it was held that, if a collective agreement is incorporation, they would be bound by it. See also *Abalogu v. Shell PDC* [1999]8 NWLR (Pt 613)12 on bindingness of collective agreement.

\(^{52}\)2000]1 NWLR (Pt 642)598

\(^{53}\)LFN 1990
oriented environment, and the safety apparatus, and the employee who is duty-bound to adhere to the safety rules, and make use of the safety gadgets provided. Rules of work may be contained in several documents. In *Ondo State University v. Folahan*, the Supreme Court examined the contract of employment and conditions of service which are contained in several documents. In *Iderima v. River State Civil Service Commission*, Rule 04107 of River State Civil Service Commission was considered for the dismissal of a civil servant.

Rule of work has been an important source of Labour and Industrial Law. In *Amaonwu v. Ahaofu*, it was held that, service rules are rules governing the contract of service between the parties thereto (i.e. a particular civil servant and his employer).

**F**  **International Treaties and Conventions**

Nigeria is a signatory to many international treaties and conventions on labour law and industrial relations. No nation can be an island of its own. Thus, labour practices in Nigeria are mostly influenced by international best practices. The above mentioned conventions/treaties are regarded as laws under international laws.

The constitution of the Federal Republic of Nigeria (as altered) has conferred on the National Industrial Court the power and jurisdictional competence to apply international best labour practices and laws in Nigeria without necessarily

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54[1994]7 NWLR (Pt354)1
55[2002]1 NWLR (Pt 749) 715
56In *Udegbumun v. F.C.D.A* [2003]1 NWLR (Pt 829), Rule 04202, Federal Civil Service Rules was considered in determining the effect of absent from duty without leave. See also *AG Kwara State v. Ojulari* [2007]1 NWLR (Pt 1016)551 CA.
57[1998]9 NWLR (Pt 566) 454
60See Third Alternation Act 2010.
following the argument of ratification and domestication as provided for under Section 12 of the same Constitution.\(^6^1\)

\(\text{(G)}\) **Customary Laws and Practices**

It is doubtful whether one can examine the sources of labour law and industrial relations in Nigeria without mentioning the influence of custom and practices. Apprenticeship as an aspect of labour relations is governed mostly by customs indigenous to the people of Nigeria. The servant serves the master for agreed number of years and thereafter, he/she is given freedom to practice the trade or profession in which he/she has been trained.\(^6^2\) Many artisans which include motor vehicle repairers popularly known as ‘mechanics’, tailors, ‘hair dressers’ and many others are trained through apprenticeship.

The Igbo of the eastern Nigeria have certain peculiarity. Trades are learnt through a different form of apprenticeship. Servants serve masters for a longer period of time learning the trade. The master then settles the servant by opening a shop for them or providing the servant with initial capital needed for the establishment of their trade. This practice is of course, regulated by custom. This has been judicially noticed in Nigeria and some parts of Africa.

Adeogun\(^6^3\) posited that, “apprenticeship contracts do not, at common law, constitute contracts of service, and consequently they do not create an employer and employee relationship between the apprentice and this master’. But it is bound in some of the incidents of the relationship such as vicarious liability. Bolodeoku\(^6^4\) defines a custom as “a particular way of behaviour which, because,

\(^{61}\) See section 254 (C) 2 of the Third Alternative Act 2010, which amends the section 254 of the 1999 constitution. It provides that “Notwithstanding anything to the contrary in this constitution, the NIC shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith”.

\(^{62}\) This is common among the Igbo traders of the East part of Nigeria. It looks like contract of apprenticeship, however, is usually informal and mostly done under family arrangements.


\(^{64}\) I.O. Bolodeoku, the General principles of Law-in Commercial Law in Nigeria-edited by E.O. Akanki, op.cit.
it has been established or in long usage among members of a social group or tribe, has developed and acquired the force of law”. The social group of people it intends to regulate its conduct must have approved such custom, before it can be said to possess the force of law.65

Section 16 of the Evidence Act66 provides that a custom is a matter of evidence and a question of fact, which must be proved or shown to have been judicially noticed. The Act provides for two major ways by which customary law is proved:

(a) When evidence is real as to its existence before a court of law67.
(b) When it is shown to have been judicially noticed.

A customary law or practice that has been judicially noticed need not be proved again, as it already has the force of law.68 The court will frown at any labour or industrial practice that encourages slavery whether or not such practice has customary acceptance69.

The application of customary law is subject to tests. Customs and native laws, that are found to be “repugnant to natural justice, equity and good conscience or incompatible either directly or by its implication with any law for the time being in force70 will not be applied by Courts. Public policy is another factor that is always considered for the applicability of customary law and custom.71

66 LFN 1990
67 The Evidence Act (EA) 2011
69 In RE Effiffong Okon Ata [1930]10 NLR 65, the court displayed its resentment for the prevailing practice of slavery, see also Koidith v. Affram [1990]1 W.A. C.A 12.
71 See Enderby Town Football Club v. Football Association Ltd [1971]1 Ch. 591 at 606. According to Denning M.R. said “I know that over 300 years ago, Hobart, C.J. said that “Public policy is an unruly horse””. It has often been repeated since. So unruly is the horse, it is said...“that no judge should ever try to mount on it, less it runs away with him” I agree. With a good man in the saddle, the unruly horse can be kept in control. It can leap fences put up by fiction and come down on the side of justice.
1.4 CONTRACT OF EMPLOYMENT AND FREEDOM OF CONTRACT.
A contract of employment is an agreement, whether oral or written, express or implied whereby one person known as the employee agrees to serve the other—the employer.\textsuperscript{72} This definition applies to workers strictly to the exclusion of the management staff.\textsuperscript{73}

It is therefore right to state that a contract of employment is just like every other contract that has some vital elements to make it valid. A binding between two or more parties creating obligations that are enforceable in law.\textsuperscript{74} The normal test for determining whether the parties have reached an agreement is to ask whether an offer has been made by one party and accepted by the other.\textsuperscript{75}

Therefore a contract of employment is, first of all, a contract where an offer of employment is given by the employer and subsequently accepted by the employee. The guiding principle when it comes to contracts is the principle of “freedom”; freedom to contract or freedom to enter into a binding contract, free from coercion, duress or undue influence.

It is pertinent to note that the freedom or succinctly put, the right which an individual exercises when it comes to entering into a contract (in the instant case a contract of employment) is clearly provided for and guaranteed under the constitution of the Federal Republic of Nigeria 1999 (as amended)\textsuperscript{76}. Where it states that no Nigerian citizen shall be held in slavery or servitude or perform forced or compulsory labour. In essence, nobody shall be forced against their will into a contract of service; therefore the freedom to contract and freedom to enter into a contract of service/employment is sacrosanct and cannot be violated.

\textsuperscript{72}Shena Security Co Ltd v. Afropak (Nig) Ltd and 2 Ors (2008) 34 (Pt 2) NSCQR 1287 at 1299, ratio 1, Per I.T. Muhammed JSC
\textsuperscript{73}Labour Act (cap. 198) LFN 1990 S. 19 thereof.
\textsuperscript{75}Akinyemi v Odu’a Investment Co. Ltd (2007)17 NWLR P.209
\textsuperscript{76}S. 34(b)(c) CFRN 1999 (as amended)
In exercising that freedom to contract, and enter into a contract of service, parties are free to enter into a memorandum of understanding which they wish to guide them subsequently before entering into a binding contract.\textsuperscript{77}

In furtherance of such freedom to contract, parties are free to set out their respective terms and conditions in the contract. In a typical contract of employment, such terms of contract are referred to as “terms of employment” and “conditions of work”.

Parties to a contract of employment are free to set out the duration of notice to terminate an employee, duration of leave and leave bonuses, working hours, salary scheme, allowances, etc. Parties are therefore free to enter into a contract of employment on any terms they choose, since parties are the best judges of their own interests, on the assumption that nobody will choose unfavourable terms.\textsuperscript{78} Once this choice is made, the courts can simply act as umpires, holding parties to their promises, and not the courts role to ask whether the bargain was fair or not.

However the courts have moved away from such reluctance as they now intervene in cases where the terms of employment and conditions of work of a contract of service/employment are harsh or unfavourable.\textsuperscript{79}

A term of employment or condition of work in a contract of employment which an employee or employer did not freely enter into will not be binding on any party thereto. This is evident in the fact that a collective agreement, standing alone is not binding on an individual employee or employer unless such a collective agreement is incorporated into the contract of service or adopted as part of the contract or condition of service.\textsuperscript{80}

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\textsuperscript{77} S.F & P Ltd v NDIC (2012) 10 NWLR P.522
\textsuperscript{78} Cathenne Elliott & Frances Quinn (Contract Law) 9\textsuperscript{th} ed. 20113
\textsuperscript{80} UBN PLC v sources (2012) 11 NWLR p.550, also ACB Nig. Ltd v Nwodika (1996) 4 NWLR (Pt 443)470.
1.5 GUIDED INTERVENTION OF 1968

Prior the guided intervention of 1968, the doctrine of laissez faire was the norm in Nigeria. It was a clear case of strict application of the principles of common law. The exigencies of the Nigerian Civil War provided a platform for the review of the doctrine of laissez faire, hence government intervention. This guided intervention brought democratic governance to the work place.\(^\text{81}\)

Prior to the 1968 intervention, Trade Dispute (Arbitration and Inquiry) Ordinance of 1941 made provision for conciliation, arbitration and inquiry: Parties to a dispute were nevertheless bound to adopt any of the means to settle disputes. Awards emanating from these processes were not binding on the parties. The Minister charged with the responsibility for labour could only intervene in disputes with the consent of the parties to the disputes.\(^\text{82}\)

Government’s intervention in 1968 revolutionized Trade Dispute settlement system when it passed the Trade Dispute (Emergency Provisions) Decree No. 21 of 1968. The passage of this statute has economic connotations as it was aimed at preventing unnecessary work stoppages and the attendant adverse economic effects when the country was undergoing her civil experience.\(^\text{84}\) Thus, it provided for compulsory settlement of trade disputes. Unlike the 1941 provision where a Minister’s intervention would be at the instance of the parties giving their consent, the 1968 Decree gave extensive power and responsibilities to the Minister of Labour in dispute resolution.

The 1968 Decree was later repealed by the 1976 Trade Dispute Act. However, the 1976 Act retained the basic features of the 1968 Decree. The 1976 Act was amended in 1992 by the Trade Dispute (Amended) Decree No. 47 to divest the regular courts of jurisdiction to entertain cases on trade disputes. Thus, the National Industrial Court (NIC) was given exclusive jurisdiction. Details on the NIC shall be discussed in chapter 8.

\(^{81}\)This is also known as freedom of contract or the doctrine of non-interference


\(^{84}\)See Trade Dispute (Emergency Provisions) Decree No. 21 of 1968 which repealed the Trade Dispute (Arbitration and Inquiry) Ordinance of 1941
SUMMARY
This introductory chapter discusses the historical overview of labour law in Nigeria, the different sources of labour law in Nigeria, the contract of employment and freedom of employment based on the doctrine of *pacta sunt servanda*, and the guided intervention of 1968. The chapter discusses the changes in labour policy and legislation due to the exigencies of the different era.

REVIEW QUESTIONS

(i) The past and the present have ways of helping us to predict the future. Examine the validity of this statement in relation to the development of labour law in Nigeria.

(ii) The received English law has influenced labour legislation in Nigeria. Discuss.

(iii) Freedom of contract is the bedrock of a valid master-servant relationship. Discuss.

(iv) Using relevant judicial authorities, examine the concept of *Pacta Sunt Servanda* as applicable to contract of employment.

(v) Discuss in detail the sources of labour law to the Nigerian labour law jurisprudence.

(vi) Write notes on the following:
(a) *Pacta sun servanda*
(b) Rule of work
CHAPTER TWO

INDIVIDUAL CONTRACT OF EMPLOYMENT

Learning Objective
At the end of this Chapter, Students/readers should be able to appreciate explain and apply the following concepts.
(i) Definition and Nature Contract of Employment
(ii) Type of Contract of Employment
(iii) Essential Elements of a Contract of Employment
(iv) The Differences between Contract of Service and Contract for Service.
(v) Test for determining the Existence of Master - Servant Relationship
(vi) Rights and Obligations of Employers and Employees
(vii) The Labour Act and the Regulated Contract of Employment

2.1 Introduction
Wedderburn has submitted that, “The English lawyer does not look first, at the relationship between worker and their employers\(^8^5\). His primary concern is the individual contract between the employer and the employee. It is vital to point out that individual contract of employment prevails over other agreements including collective agreements or trade union negotiations and compromises.\(^8^6\) Contract of employment is governed by the general law of contract. Thus, the existence of offer, acceptance, consideration, capacity to contract, intentions to create legal relations are vital. Oyewumi\(^8^7\) has promptly described

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\(^8^6\) See Cooperative & Commerce Bank (Nig) Plc V Rose (1998) 4 NWLR (pt 544) 3.7 CA where the Court of Appeal held that, all the affected defendants did not have a common interest. The interest of each was tied to his or her contract of employment with the appellant.

employer/employee thus, “employer/employee relationship arises from a contractual undertaking between two parties to exchange of wages for services.\(^{88}\)

### 2.1.1 Definition of Contract of Employment

Contract has been defined as an agreement between two parties that is enforceable by law.\(^{89}\) Enforceability implies that such contract must not be illegal, ambiguous, contrary to public policy and it must have other elements such as certainty of terms and clear intention of contract or intention to create legal relations.\(^{90}\)

Contract of employment can simply be defined as agreement between a person known as employer and another person known as employee for employment or labour purposes in which a master and servant relationship exists within the boundaries of the terms set-out and within applicable laws which govern the relationship.\(^{91}\)

It is quite appreciable that there can never be one universally accepted definition. Thus, several writers have defined the phrase “contract of employment” in different ways. However, some tests have been developed to determine whether a relationship of master and servant exists between the parties.

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\(^{88}\) Adejoke O. Oyewumi op.cit, The Learned Prof submitted “this undertaking or agreement, as in the general law of contract, requires a definite offer and an unconditional acceptance where an agreement has been made, it becomes binding and enforceable unless it is vitiated by illegality, mistake, fraud, misrepresentation, incapacity, duress or undue influence

\(^{89}\) See P. Ramanatha Aiya ‘The Major Law Lexicon’ The Encyclopedic Law Dictionary with Legal Maxims, Latin Terms and words phrases’ 4\(^{th}\) Edition 2010. Extensionally Revised and enlarged, pg 1476’. Agreement enforceable by law is contract see also Indian contract Act (9 of 1872) 3.2ch); Contract shall include sub-contract. The same law lexicon, defines contract of employment as “legally binding document that defines the terms and conditions of somebody’s job

\(^{90}\) See Adejoke O.Oyewumi Job Security And Nigerian Labour Law op.cit; pg 39

\(^{91}\) See Kehinde Bamiwola ‘Human Rights and Employment Discrimination; A Comparative Examination of Equal job opportunities; (2011) Published by the International Labour Organization (ILO); see also, Seyi Shadare and Kehinde Bamiwola “The Legal Environment of Industrial Relations in Nigeria (2015) published by the Faculty of Business Administration, Nigerian Journal of Management Studies, University of Lagos, at pg 109
Thus, in *Smith v. General Motor CAB Co*,\(^{92}\) the court held that there was no relationship of master and servant but that of bailor and bailee. The ratio for this decision was based on the fact that labour law considers master and servant relationship only.

### 2.2 TYPES OF CONTRACT OF EMPLOYMENT

Employment contracts “exists when a worker (employee) is paid for work by an employer”. This contract of employment can be classified by express contract, implied contract and contracts which contains an implied covenant of good faith and fair dealing.\(^ {93}\)

(a) **Express contract:** This exists when both parties (employer and employee) agree on employment terms before or at the time of concluding the contract. The terms of the employment are what regulate the relationship of the parties.

(b) **Implied contract:** In most cases implied contracts are inferred from relationship between the parties. The inferences are usually drawn by courts wherever disputes arise out of the relationship. Custom or practice may be implied into a contract of employment.

(c) **Contracts which contain an implied covenant of good faith and fair dealing.**

This type of contract can also be extended to employment contracts. In *Flanigan v. Prudential Federal Savings & Loan*,\(^ {94}\) the Montana Supreme Court took that position when it upheld a jury verdict of $1.5million for a bank employee dismissed after twenty eight years of service. No good cause for the discharge was provided. It was found to be a breach of the implied covenant of good faith in employment dealings.

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\(^{92}\)(1911) A.C. 188  
\(^{94}\)720 P.2d 257
2.3 ESSENTIAL ELEMENTS OF A VALID CONTRACT OF EMPLOYMENT

The decided cases merely indicate a number of factors which are relevant to a finding that a particular contract is one of employment or a contract service.  

The dichotomy between the two is that for contract of employment, emphasis is placed on the power of the employer to control the work of the employee and for contract of service which has the involvement of independent contractor; the principal (employer) can merely direct what work is to be done by his agent. Sometimes, he may direct how the work is to be done. Thus, forced labour will not fit into contract of employment that is governed by freedom of contract.

Traditionally, the components of any contract must include offer and acceptance, consideration; agreement based on consensus ad idem, capacity, and intention to create legal relations.

2.3.1 Offer and Acceptance

An offer is a definite promise to be bound on certain specific terms. In Paul Wenegeieme v. Roofco (Nig) Ltd, it was held that an offer must be communicated before it can be accepted.

Acceptance must be straightforward, unqualified, firm, definite and unequivocal. Thus, the same principles that govern offer must govern acceptance. So when it is not direct like offer, it will not be considered as acceptance.

It must not be a counter-offer, which is a new offer. This is the principle established in Hydey, Wrench. In Ajayi Obe v. Secretary, Family Planning of Nigeria. Supreme Court per Elias CJN said “one of the most elementary rules of the law of contract is that there must be a definite offer by the offeror and a definite acceptance by the offeree. See the following cases Afolabi v. Polymera Industries Ltd; Federal Government of Nigeria & ors v. Zebra Energy Ltd.

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96 (1986)2 FNR 244
97 49 ER. 132. (1840) 3 Beav. 334.
98 (1975)1 All NLR 90
99 (1967) 1 All NLR 144 at 147
100(2002) 18 NWLR (Pt 798) 162, 211
The processes leading up to the offer of a binding contract of employment may include written tests, personal and/or telephone interviews, and medical examinations. These may be followed by request for and provision of references and in some cases, letters of indemnity or guarantee. A purported acceptance of an offer of employment will not bind the employer unless and until all the stipulated conditions are fulfilled.

2.3.2 Consideration
Consideration is the exchange of promise(s) for performance. The employer undertakes to pay wages for the service rendered. The justification for the wages is the service rendered or else consideration will not be furnished. Consideration may be executed or executor\(^1\). In *Jimoh Ogun v. Owolabi*,\(^2\) the Court of Appeal stated that consideration is of the essence in a contract.

It is the law that consideration must not be past as laid down in *AG of Bendel State v. Okwumabua*.\(^3\) In this case, it was held that a promise made subsequent to the acceptance of employment and assumption of duty cannot create an enforceable and binding legal obligation without fresh consideration. Consideration must be at the point or during the course of negotiation. Thus, job interviewers will always ask the interviewees: “what do you think that we should pay you?”. Although some interviewees see this question as a technical one or a question in negotiating the consideration of the contract of employment per adventure, the applicant is selected\(^4\).

2.3.3 Capacity
An infant cannot enter into an enforceable contract.\(^5\) However, even at common law there are exceptions to this. Some of these exceptions include the fact that the infant may avoid the contract upon attaining the age of majority. In

\(^1\) *Curie v. Misa* (1871) 1 A.C 554; *Ajayi v. R.T. Briscoe (Nig) Ltd.* (1962) 1 All NLR 673
\(^2\) (1988) 1 NWLR (Pt 68) 128
\(^3\) (1980) FNR 435
\(^4\) *Nig. National Supply Col Ltd v Agricor Inc. of U.S.A.* (1994) 3 NWLR (Pt 332) 329 CA
\(^5\) See section 91 of the Labour Act which defines young person to mean ‘a person under the age of eighteen years
Labijohn v. Abake,\(^{106}\) the age of majority was considered to be 21. The court will also enforce a contract if it is for the infant’s benefit, as laid down in Doyle v. White City Stadium Ltd.\(^{107}\) In Olsen v. Corry and Cravesend Aviation Ltd,\(^{108}\) the court considered as void a contract of apprenticeship involving a boy of seventeen years because the contract contained a term exempting the master from all liabilities for injuries no matter how they were sustained.

The contractual age under common law is twenty-one (21) years\(^{109}\), while under the customary law, it is puberty. However, the Labour Act has modified the common law principle as regards the capacity of an infant. Thus Section 59(1) (a) provides for the employment of an infant of twelve years\(^{110}\), but such infant must not be employed in underground work or on a machine if he is less than sixteen years of age. Majority age in Nigeria appears to be eighteen (18) years\(^{111}\). Section 59(2) prohibits an infant under the age of fifteen years from being employed or allowed to work in an industrial undertaking\(^{112}\). The principles are contained in section 59-61 of The Labour Act.

2.4 The Contract of Employment and “Decent Work”.
In drafting employment contracts, it is now important to reflect on the ILO’s concept of ‘decent work’.\(^{113}\) The concept advocates the provision of equal opportunity for access to work for all persons, under terms and conditions that promote freedom of association, equity and equality of treatment at work, security and human dignity. Consequently, every contract of employment should reflect work. Some of these conditions will include respect for individual peculiarities, collaboration, flexibility, equality, non-discrimination, opportunity for growth, fair and transparent methods for determining promotion and career

\(^{106}\)(1924) 5 NLR 79
\(^{107}\)(1934) 4 All ER Rep 259
\(^{108}\)(1936) 3 All ER 241
\(^{109}\)See Labijohn v Abake (supra)
\(^{110}\)See section 59 of the Labour Act, LFN, 2004
\(^{111}\)See section 91 of the Labour Act, LFN, 2004
\(^{112}\)See sections 59-61 of the Labour Act
advancement, respect for freedom of association and collective bargaining, provision of fair and timely opportunity for resolving disputes, and respect for institutional processes, including those institutions for the resolution of industrial disputes.\textsuperscript{114}

2.5 The Form of Contract of Employment

It is governed by the common law. It may be in writing, or oral, partly in writing or partly oral or by deed. An oral contract is as valid as a written contract though an oral contract presents a greater problem of proof. There is no standard form for contract of employment. It may take any form.\textsuperscript{115} The exception to this are: contract for employment of a Seaman,- S. 22 (1) Merchant Shipping Act\textsuperscript{116} and contract of an apprentice, Section 18(1) The Labour Act. Thus, apart from contract of seamanship or of apprenticeship, no contract is expressly required to be in writing. However, Section 7 of the Labour Act\textsuperscript{117} provides that where a contract is not a written contract, its particulars must be delivered by the employer to the worker within three months of the commencement of the employment.

2.6 Contract of Employment and Employee’s Handbooks

Terms of contract of employment are central to the relationship between employers and employees. Employees’ handbooks contain the expressed terms of contract. It often discusses grounds for discipline and dismissal. Some of these terms are basically policy issues of the employer. Some employees’ handbooks enumerate the disciplinary and dismissal procedures. Some assert that employees will be dismissed only for “good cause” and that certain dismissal safeguards exist such as review by a committee or managerial supervisor.\textsuperscript{118} Courts do construe these handbooks to create or imply contracts that limit the presumption of employment at will.

\textsuperscript{115} Adetoba v. Godwin World-wide Ltd (1982) OGSCR 160-L
\textsuperscript{116} Merchant Shopping Act, 1962, Cap MX, LFN, 2004
\textsuperscript{117} Labour Act, LFN, 2004
\textsuperscript{118} See Meiners et al, op.cit pg409
In *Foley v. Interactive Data*, the Supreme Court of California noted “breach of written ‘termination guidelines’ implying self-imposed limitations on employer’s power to discharge at will may be sufficient to state a cause of action for breach of employment contract”. Using the California case as a basis for inferring express or implied terms as contained in the Employees’ Handbook, courts will look at employment practices, including statements in a handbook as limits on dismissal at will.

In practice, the best that Employee Handbook can represent in the relationship between employer and employees is that of employer’s will over the employee since it is the former that issues it to the latter. Thus, the issuer who is the employer will be *estopped* to act contrary to the contents of the Handbook.

### 2.7 WHO IS AN EMPLOYEE?

According to Harvey “the law knows various categories of workers”. The rights of employers and employees will be determined by the category of which the worker belongs. The word “worker” and employee” are mostly used interchangeably. However, modern legal literatures appear to be moving toward total adoption of employee as a substitute for worker. Thus, worker appears to have a junior employee connotation. The terms “worker” and employee” are used interchangeably in this text.

The expressions ‘employer’ and ‘employee’ have been described as having no precise meaning in law apart from the context in which it is used. The common law understands the term “master” and “servant”. Employer and employee appear to be a modern translation of master and servants.

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119 765 p.2d 373.

120 See *Guz v. Bechtel National Inc*. Sup. Ct.24 cal. 4th, 317, 8p.3d 1089, 100 cal. RPTR. 2d 352 (2000). In this case, Bechtel’s written personal documents are the sole source of any contractual limits on Bechtel’s rights to terminate Guz.

121 Harvey on Industrial Relations [1993] Issue 04 Butterworths; A/1

122 See section 90 of Labour Act LFN 1990; section 48 trade Dispute Act LFN, 1990

123 There has been a shift from the so-called master-servant relationship as recognized by the common law. Employment relations are being governed mostly by statutes, and international best practices. Thus, constitutional and statutory provisions are superior to the common law.
A servant serves another in the sense that he puts himself/herself and his/her labour at the disposal of another (called his/her master), in return for remuneration in cash or kind\textsuperscript{124}. The contract between both is called “contract of service”. Defining the degree of submission appears to be a difficult task. Thus, degree of submission may be one of the criteria for determining whether everyone who serves is necessarily a servant in the strict legal sense.

Another vital question is whether a person under industrial attachment can be called a servant. This has been resolved by the Court of Appeal in \textit{Moronkeji v Osun State Polytechnic},\textsuperscript{125} where it was held that, a person on industrial attachment with an establishment is not a servant, agent or privy of that establishment. Consequently, the establishment is not bound by his actions in any form whatsoever, unless there is a direct evidence establishing a contractual relationship.

It appears this may not be applicable to Corps members from the National Youths Service Corps. This may not be unconnected with the fact that there is a term in the acceptance document from the N.Y.S.C which states that, Corps’ Member should be treated as a staff of the establishment\textsuperscript{126}.

Another class of worker, whose degree of submission to the employer is not as deep as expected is that of independent contractors. Simplifying the differences between a servant and an independent contractor; one sells his labour (servant) and the other sells the end product of his labour (independent contractor). In the first case, the employer buys the man (e.g. a chauffeur) and in the latter, the employer buys the job (e.g. a taxi driver). Thus, servants are governed by contract of services while independent contractors are governed by contract for services.

\textsuperscript{124} Ibid
\textsuperscript{125} (1998) 11 NWLR (Pt. 572) 146 C.A
\textsuperscript{126} This first term of acceptance of Corps members into an establishment provides that, Corps Member should be regarded as Staff of your establishment and be given adequate job assignment and positions of responsibility commensurate with their qualification, training and experience.
2.8 CONTRACT OF SERVICE VERSUS CONTRACT FOR SERVICE

Among the common features of a contract of service are an obligation by the employer to employ a man, and to pay him an agreed or proper wage, and a right to control his services and the manner in which he performs them, and to dismiss him if reasonable cause is shown. On the other hand, the workman must obey all reasonable directions present himself for work at an agreed hour. Difficulties may arise where some of the indices of the relationship are not present. Denning L. J. in Stevenson Jordan and Harrison Ltd v. MacDoonal & Evans\(^{127}\) said “It is often easy to recognize a contract of service\(^{128}\) when you see it, but difficult to say wherein the difference lies” The courts have over the years put forward a number of tests for determining whether or not a particular relationship is that of employer-employee. However, how do the courts distinguish between the two types of contract?

The issue was addressed by the Supreme Court in the case of Shena Security Ltd v. Afropak (Nig) Ltd and 2 Ors.\(^{129}\)

1. The Supreme Court said “where there is a dispute as to which kind of contract the parties enter, there are factors which usually guide a court to arrive at a right conclusion. For example:

   (a) If the payments are made by way of “wages” or “salaries” this is indicative that the contract is one of service. If it is for service, the independent contractor gets his payment by way of “fees”. Also, where the payment is by way of commission only or on the completion of the job that indicates the contract is for service.

   (b) Where the employer supplies the tools and other capital equipment, there is a strong likelihood that the contract is that of employment or of

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\(^{127}\) (1952) 1 T.L.R. 101

\(^{128}\) In *John Holt Ventures Ltd v. Oputa* (1996)9 NWLR (Pt 470) 101. CA, it was held in this case that a contract of service can be subject to both statutory and common law rules under the common law, the master can terminate the contract of service with his servant at any time for any reason or no reason at all. It must be noted that this common law position has been modified in the modern jurisprudence of labour law.

\(^{129}\) (2008) 6 CLRN 1
service. But where the person engaged has to invest and provide capital for the work to progress, this indicates that it is a contract for service.

(c) In a contract of service/employment, it is with the terms of the contract for an employee to delegate his duties under the contract.

(d) Thus, where the contract allows a person to delegate his duties hereunder, it becomes a contract for service.

(e) Where the hours of work are not fixed, it is not a contract of employment/of service.

(f) Where a contract allows the work to be carried outside the employer’s premises, it is more likely to be a contract for service.

2.9 TESTS AND CRITERIA FOR DISTINGUISHING CONTRACT OF SERVICE FROM CONTRACT FOR SERVICE

There are various tests used in determining the existence of employer-employee relations. The tests include:

(a) **Personal service**

The operative phrase here is “personal service”. The servant must have entered into the contract to undertake and provide personal service to his master. He cannot delegate his service or send a substitute which is the usual practice by contractors.

In *Ready-Mixed Concrete (South East) Ltd v. Minister of Pensions and National Insurance*[^130^], Latimer was driving a concrete mixing lorry which he obtained from the company on hire purchase. But he wears the company’s uniform, drives the lorry exclusively for the company and agreed to submit to all reasonable orders, as if he were an employee. It was held by Mckenna J. that he was not a servant but an independent contractor. The ratio for the judgment inter-alia was that he was not required to drive the lorry personally as he was free to employ and pay a substitute driver. Thus, the operative clause for this test is whether the servant can be substituted, if yes, then, not a servant but an independent contractor.

(b) The “Control Test”
This is the most prevalent test for distinguishing a contract of service from a contract for service. Service means *inter-alia*, submission to the will of another person and it also includes a right of the master to give orders with a correlative duty in the servant to carry the orders out. The servant in doing this is therefore subject to a significantly greater degree of control than the independent contractor. The master has power over what is done, how it is done, where it is done, and for whom it is done. “A servant is a person subject to the command of his master as to the manner in which he shall do his work”\(^{131}\).

However, it has been noted that this test is not conclusive as an independent contractor can also agree to submit himself to the same degree of control as a servant without actually becoming a servant\(^{132}\). This test as earlier pointed out is not conclusive; for instance, a medical doctor cannot in most case wait for the control of his master in carrying out his/her duties and obligations.

(c) The “Economic Reality Test”
This approach is called economic reality or “business reality” test. The test suggests that, in addition to degree of control, “the opportunities of profit or loss, the degree to which the worker was required to invest in the job in the way of provision of tools or equipment, the skill he required for the allegedly independent work and the degree of permanency of the relationship” be equally examined. The legal questions to ask under this test include:

(i) Who is providing the tools or equipment needed for the work?
(ii) What is the duration of the relationship?

\(^{131}\) *Yewens v. Noakes* [1880]6 QBD 530 per Bramwell Cy.

\(^{132}\) See also *Ready-Mixed Concrete (South East) Ltd v. Minister of Pensions and National Insurance* (supra). Latimer agreed to be controlled by the terms of contract, yet he was held not to be a servant.
(iii) Who is to benefit or suffer from the profit or loss of the venture respectively?

(iv) Was the worker a small businessman or an employee? and

(v) Was the worker his own boss?

(d) The “Organizational Test”

Lord Denning in Stevenson Jordan and Harrison Ltd v. MacDonald and Evans suggested this test so as to avoid some of the problems of control test as demonstrated by Ready-Mixed Concrete Case. He called this test “integration test”

Denning LJ said:

‘Under the contract of service, a man is employed as part of the business, whereas under the contract for service, his work although done for the business is not integrated into it but only accessory as being too vague, ambiguous, it has been observed that organizational test provides easy answer to the question “would the ordinary man say that the worker was part and parcel of the organization”, than the question “would the ordinary man say this was a contract of service?”

Organizational test appears to be relevant as the “control test has been reported to have failed in determining the existence of contract of service between employer and employee under certain employment industrial relation. It is doubtful whether a surgeon can be controlled by a less qualified employer.

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134 See also Morgan v. Master [1948]1 RLR., 207 EAT.
135 [1952]1 TLR 101 CA
136 Supra
137 See Casidy v. Minister of Health [1951]2 KB 343; [1951]1 All ER 474 C.A. See also Lindsey Country Council v. Marshal [1937]2 KB 293
(e) **The “Multiple Test”**

The essence of the multiple tests is to avoid the problems any of the identified tests may pose. The multiple tests will look at important features of various tests enumerated earlier. The questions to raise here include whether or not the worker undertakes to provide his own work and skills in return for remuneration, whether or not there is sufficient control to enable the worker or employer to be called a servant, whether or not the worker can be said to be an integral part of the employer’s business, and whether or not there are any other factors inconsistent with the existence of control of service. The combination of all of the tests mentioned above is known as the multiple tests.\(^{138}\)

2.10 **Employees as ‘Servants’ and ‘Agents’ under Vicarious Liability**

Master-servant relationship is the relationship that exists between the employee and the employer. The employees can also act as agents and servants, with their employers as the principals. For example, sale representatives who are employees at auto dealership and authorized to sell cars within certain price ranges without supervision of a supervisor (i.e. who exercise control) are employees with specified or certain agency powers to act for their employer. The test for determining this type of agency relationship is based on the legal authority or responsibility which exists when questions arise about the validity of a contract or when a tort is committed by the employee. Thus the concept of vicarious liability applies as the employee will be seen as the agent of the employer.

The rule of vicarious liability implies that a principal or employer can be liable for the unauthorized torts (whether intentional or negligent) of agents or employees who were acting within the scope of the employment. The scope is always determined by the clause ‘in the course of the employment’\(^ {139}\).

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\(^{138}\) See *Ready-Mixed Concrete’s Case* (supra) [1974]16 KIR 158; Div ct.

\(^{139}\) See *Obi v. Biwater Shellabear Nig. Ltd* [1997] 1 NWLR (Pt 484) 722 CA; *NBN Ltd v. T. A. S. A Ltd* [1996]8 NWLR (Pt 468); *Yahaya v Oparinde*, [1997]10 NWLR (Pt 523) 126 C.A; *Olubunmi v. Abdulahi* [1997]2 NWLR (Pt 489) 526 SC.
Courts consider some of these factors in determining whether the act that leads to the tort was committed in the course of the employment. These include whether the act was of the same general nature as those authorized by the principal or employer, whether the employee was authorized to be where he was at the time the act occurred, whether the agent was serving the employer’s interest at the time of the act. The rule of law imposing various liability upon an innocent employer, or principal, is respondent superior. The justification for this rule is built on the doctrine that the principal is in a better position to protect third parties or members of the public from such torts, by controlling the actions of its agents or employees and to compensate those injured as a result of the tortuous act. Thus, employer may be liable for torts of employees immediately the outlined tests have been carried out successfully.

2.11 RIGHTS AND OBLIGATIONS OF EMPLOYER AND EMPLOYEE
The word ‘right’ here is used loosely to mean duties and obligations of one person that are to be carried out by him which becomes rights to the other party. The rights and duties of the parties to a contract of employment are primarily found in the contract of employment itself where written, or established by evidence where oral. Regardless of the express terms, implied terms to a large extent determine the obligations of the parties. An express term refers to those terms which the parties expressly agreed upon, and may be contained in one or

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141 See Roger E. Meiners (op.cit) p.392; see also Reed v. Scott Fetzer Company 990 S.W. 2d 732 (1998)
142 The word ‘right’ has numerous meanings. It falls within the polytechnic class. However, according to Salmond, right is an interest, respect for which is a duty and disregard of which is a wrong. Black’s Law Dictionary defines right as something that is due to a person by just claim, legal guarantee or moral principle. See Black’s Law Dictionary, Eight Edition at pg 1347; see Attorney General of Lagos State v. Attorney General of the Federation (2005)2 WRN pg 1 at pp 107-108 per Niki Tobi JSC where right was defined as a ‘legal right cognizable in law it means right recognized by the law and capable of being enforced and protected by a rule of laws violation of which would be a legal wrong….
more documents such as the employee’s handbook, collective agreements, and arbitration awards which become incorporated into the individual contract. The National Industrial Court\textsuperscript{144} has original jurisdiction to interpret collective agreements between unions and employers.

The duties of the worker are usually spelt out in the terms of the contract. Some of them are expressly provided for while some are implied.\textsuperscript{145} Some terms may also be implied into the contract of employment in order to give it a business efficacy. A term proved by custom may also be implied into a contract\textsuperscript{146}. For a custom to be a source of law, it has to be notorious, reasonable and certain. A term may also be implied by statute; for instance the Nigerian Labour Act implied certain terms into the contract of employment. A term may also be implied if it goes contrary to the express terms, and a custom may not be proved if it would be inconsistent with either an express term or an implied term.

We shall examine the duties of employees and employers, the ‘rights’ \textit{stricto senso} under Trade Unions Laws and breach of contract of employment.

\textbf{2.12 DUTIES OF EMPLOYER}

\textbf{(i) Duty to pay wages}

This is the consideration received by the employee for working for an employer. The employer owes the employee the duty to pay the latter for his services. This duty to pay is always expressly stated in the contractual document or implied at common law. A term to pay will be implied in circumstances which indicate that employment was not to be gratuitous. Once the duty to pay wages or salary exists, then the employer must continue to pay such remuneration to an employee who is ready, able and willing to

\textsuperscript{144} See section 254C of the Constitution of the Federal Republic of Nigeria, 1999 as altered on the exclusive jurisdiction conferred on the National Industrial Court of Nigeria by virtue of the Third Alteration Act, 2010 which altered the Nigerian Constitution.


\textsuperscript{146} See Meiners et al. The Legal Environment of Business op. cit see full citation in chapter one.
work, whether or not work is provided. See Way v. Lattila\(^\text{147}\). A ‘quantum meruit’ is only available where there is no term of the contract, express or implied, dealing with the question of remuneration. ‘Quantum meruit’ will also be appropriate where the contract is, for some reason, invalid but not illegal. In Bryant v. Flight,\(^\text{148}\) it was held that where duty to pay wages is not expressly provided for, national minimum wage will be the appropriate wages payable. However, an employee who takes part in a strike is not entitled to any wages or salary or any remuneration for the period of the strike. However, in lock-out by an employer, the employees are entitled to be paid their entitlements which include wages and salary for the lock-out period. Section 15 of the Labour Act\(^\text{149}\) emphasized this important duty.

The duty to pay remuneration may cease in the following instances:

(a) Sickness (depending on the terms of the contract
(b) Lay-off
(c) Suspension of contract
(d) A fundamental breach by the employee accepted by the employer or vice versa.

(ii) Duty to provide work

This duty is provided for under Section 17 of the labour Act\(^\text{150}\). This duty is subject to collective agreement provisions. “Except where a collective agreement provides otherwise, every employer shall, unless a worker has broken his contract, provide work suitable to the worker’s capacity.” In Collier v. Sunday Referee Publishing Co. Ltd\(^\text{151}\), Asquith J expressed the common law rule “provided I pay my cook her wages regularly, she cannot complain if I choose to take any or all my meals out”.\(^\text{152}\)

\(^{147}\) (1937)3 All ER 759, 763
\(^{148}\) (1889)5 M & N 114
\(^{149}\) The Nigerian Labour Act, LFN, 2004
\(^{150}\) Ibid
\(^{151}\) (1940) KB 647
\(^{152}\) Turner v. Sawdon (1901)2 K.B, 2653
However, the common law has made certain exceptions where opportunity for actual work is of the essence of the contract of employment. For example, in contracts of apprenticeship, the employer must undertake to train or cause the apprentice to be trained or be instructed in the trade or skill or employment in which he is apprenticed. A duty also exists to offer work where remuneration depends wholly or perhaps partially on commission or piece rate or in the contract of employment of actors and actresses, the need to gain publicity and enhance reputation.\(^\text{153}\)

(iii) **Duty to provide a safe system of work**
This duty deals with ensuring that employee carries out his/her work or operations in a safe manner. It deals with supervision and safety precautions which the employer uses in his operations.\(^\text{154}\) Section 65 and 66 of the Labour Act\(^\text{155}\) provide that the Minister may make regulations providing for good and healthy work environment.

(iv) **Duty to provide a safe place of work**
This duty is to ensure that the employer carries out his operation in a safe manner. The duty is held to arise whenever the employee is doing his work within the scope of his employment. In *Bradford v. Rentals Ltd.*,\(^\text{156}\) the plaintiff, a 56-year old employee of the defendant company was sent on a long journey in an unheated van during winter in England. The employee had severe frost-bite and suffered great injury as a result. The defendant company was held liable. This duty does not exist at common law duty but exists through statutory intervention. It also

\(^{153}\) See *Clayton v Oliver* (1930) A.C 209


\(^{155}\) LFN 2004

\(^{156}\) (1967)1 All E.R 267
deals with supervision and safety precautions, which the employer uses in his operation\textsuperscript{157}.

\textbf{(v) Duty of Care}

It is the duty of an employer to take reasonable care of the safety of all employees in the course of their employment\textsuperscript{158}. This duty is personal to each employee, and is not discharged by delegation. The peculiarities of each employee must be taken into consideration in determining the standard of care required to discharge that duty. The scope of this duty includes the provision of a safe place of work, safe working system, competent staff and a conductive working environment.

The Supreme Court restated this in the case of \textit{Iyere v. Bendel Feed and Flour Mill Ltd}.\textsuperscript{159} In this case the plaintiff was employed as a silo attendant by the defendant. While on duty, he was asked by the duty manager to clear the conveyor so as to stop the frequent stoppage of materials by the conveyor. Whilst the plaintiff was still at the mill below clearing the blockage, the switch operator restarted the machine without waiting for a feedback from the plaintiff. The plaintiff’s right arm was caught in the machine and damaged. His employment was thereafter terminated by the employer. He brought an action against the employer for negligence. The trial court dismissed the action. The Court of Appeal affirmed the decision. The plaintiff appealed to the Supreme Court, and the appeal was allowed.

\begin{itemize}
\item \textsuperscript{157} See sections 66 & 67, Labour Act, LFN 2004
\item \textsuperscript{158} ‘In the course of employment’ has been defined by ‘case laws’ see \textit{Ifeanyi Chukwu (Osondu) Co Ltd v Soleh Bonah (Nig) Ltd} (2000)12 WRN 1. According to Prof. C.K. Agomo, ‘whether an employee is in the course of employment, is a question of fact in each case. In \textit{C.S Adeleke v Kenneth Rhard & Brisise Helicopters} (unreported), the1st plaintiff was said to be in the course of his duty while driving negligently and caused an accident in which the appellant sustained serious injuries. In \textit{IKO v John Holt Ltd} (1957) 2 FSC 50, A drug who has involved in an accident while he was on his way to eat food in the course of his doing overtime was held to have been acting in the course of his duty.
\item \textsuperscript{159} (2008)12 CLRN 1
\end{itemize}
(vi) **Duty to Provide Testimonial or Reference**
There is no obligation on an employer to supply character reference in respect of his employee, either during the employee’s employment or at the termination of the relationship. If a reference is defamatory, the defamed employee may bring an action against the employer. A person who acts in reliance on a reference which has been issued negligently may sue the issuer of reference for damages for loss suffered in consequence of the negligence.

(vii) **Duty to Provide Indemnity**
An employer is entitled to an indemnity from an employer in respect of expenses reasonably incurred in the course of the execution of his lawful duties. The employer is also liable for the fraud perpetuated by his employee in the course of his duty. In *UAC vs. Saka Owoade*, the employer of a clerk and a driver who collected goods on his behalf and appropriated them was held liable to pay for the goods. However, a discerning employer could take an Employers liability insurance to mitigate the effect of any loss suffered in this regard.

(viii) **Vicarious Liability**
An employer is vicariously liable for the tort of the employee provided it is a tort in respect of which an action could be brought against a private individual, and the person by whom the tort was committed was acting in the course of his or her employment and within the scope of his authority, where a driver who was involved in an accident while on his way to have a meal in the course of an overtime duty was held to be acting in the course of duty. In *Chukwuemeka v. Iweramor*, there is a presumption that where someone is driving a vehicle other than the

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160 See *Ayoola v. Olajire* Unreported
161 See *Hedley Byrne v Heller & Partners Ltd* (1994) AC 465
162 13 W.A. C.A, 2007
163 See *Iko v John Holts Ltd* (1957) 2 FSC 50
164 (1996)9 NWLR 327
owner, the driver is the servant or agent of the owner. The burden is on the owner of the vehicle to prove that the driver was not his servant or agent, or that he was on a frolic of his own.

2.12.1 Other duties
Apart from the duties mentioned above, the employer is duty bound to employ competent staff, all incompetent workers are a danger to his fellow workers. This duty was developed in response to the doctrine of common employment which states that a master was not liable for any injury sustained by a worker arising from the normal course of his duty if such injury was caused by the servant’s fellow-worker. However, the doctrine of common employment has been abolished in Nigeria. The following laws have the above principles of the law of tort well specified. They are Law Reform (Tort) Law, Eastern Nigeria Torts Law; S.4 (1) Western Nigeria Torts Law 1958. By inference, the duties of an employer are the corresponding rights of the employee.

2.13 Duties of an Employee
The duties of the employee are as follows:

(a) To offer personal service
(b) To be ready and willing to work
(c) Not to willfully disrupt the employer’s undertaking i.e. to co-operate with the employer.
(d) To obey reasonable or lawful orders
(e) To give exclusive service, i.e. to work only for the employer in the employer’s time
(f) To account for profits received
(g) To respect the employer’s trade secrets

165 Akintunde Emiola op.cit
166 See Law Reform (Tort) Law
167 Law Reforms (Tort) Law (1961) Section 3(1)
168 Eastern Nigeria Torts Law (1962) Section 4; Western Nigerian torts Law (1958)
(h) To take reasonable care of the employer’s property and to exercise reasonable care and skill in the employer’s service.

(i) Duty to Obey Orders

An employee is to obey all lawful and reasonable orders of his employer. Such orders must not be contrary to public policy. In Pepper v. Webb\textsuperscript{169}, an employee’s act of gross disobedience and insolence was held to justify his dismissal. This was espoused in Nicol v. Electricity Corporation of Nigeria\textsuperscript{170}. Thus, dismissal upon disobedience will only be justified after considering the lawfulness of the order disobeyed.\textsuperscript{171}

An isolated act of obedience may not automatically justify a dismissal unless the act of disobedience amount to a repudiation of the fundamental condition of the contract or the nature of the act is of sufficient magnitude.

It has been held by the National Industrial Court\textsuperscript{172}(NIC) that a worker has no right to vary any part of the lawful instruction, without prior approval of the boss. This constitutes disobedience of a lawful order which is an act of misconduct.

(ii) Duty to Exercise Care and Skill

A term is implied into every contract of employment that an employee who accepts a particular job or post possesses the necessary skill required for the effective and efficient performance of the job with due diligence and reasonable care. An employee is duty bound to exhibit diligence, skill and reasonable care in the performance of his duties. In Jupiter Insurance v. Schroff\textsuperscript{173}, Lord Maugham

\textsuperscript{169} (1969)2 All ER 216
\textsuperscript{170} (1965) LLR 261
\textsuperscript{171} See also Eaton v. Western (1982) QB 636(1974); Wilson v. Racer 1CR 428
\textsuperscript{172} See judgment in unreported Suit No NICN/LA/153/2014 where His Lordship Hon Justice O.O.Oyewumi referred to Shuaibu v N.A..B (1998) 4 SCNJ 109 at 129 on definition of misconduct as any act outside the scope of an employments duties in his employer’s establishment which is prejudicial to the latter’s interest, is willful misconduct, considering the nature of the business and service in which his master is bound to provide to the customers. See also Nwobosi v ACB Ltd (1995)6 NWLR (Pt 404)658
\textsuperscript{173} (1937) AC
described the standards of reasonableness expected from an employee in a working situation to be “the standards of men, and not of angels. He must take care of his employer’s property and must not cause willful damage to the machine and plants under his care”. Thus, in *Lister v. Romford Ice and Storage Co.* 174 negligent manner and caused injury to fellow employee who happened to be his father, was held liable in damages to the employer.

(iii) Duty of Good Faith

This duty is based on the concept of absolute loyalty as expressed in *Abomeli v. Nigerian Railway Corporation* 175. This duty includes the duty not to make secret profit. 176 The duty to work for the master during employer’s time, was espoused in *Hivac Ltd v. Park Royal Scientific Instruments Ltd* 177; and a duty to protect the employer’s confidential information including the marketing plans and business strategies, financial plans industrial relations strategy or production formulae. In *Robb v. Green* 178, the employee copied a list of his employer’s customers and their addresses with the intention of using the list after leaving the employer’s service and setting up his own. This was held to be a breach of fidelity. 179 An employee must not be in competition with the employer. Employers do impose restraint of trade clauses to protect trade secrets and confidential information. 180

The duties of employees constitute rights of the employer. Where a duty exists, a corresponding right exists. 181 Where a duty is breached, the other party can enforce his right or what he stands to benefit if the duty had been carried out. Rights are not absolute. There are qualifications or allowable exceptions.

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174 (1957) AC 555
175 (1995)1 NWLR 372, 451 at 457
176 See *Maja v. Stocco* (1968) All NLR 141 *Boston Deed Sea Fishing and Ice Co. v. Ansell* (1883)39 CLD 339
177 (1946) CH 169
178 (1995)2 QB 315
179 See also *Alperton Rubber v. Manning* (1917)86 CJ CH
180 See *Nordenfelt v. Maxim Nordenfelt Co* (1874) AC 535
181 Holfield “Fundamental Legal Conceptions 1919 ‘Summonds cited by Funso Adaramola op. cit pg 147
2.14 THE LABOUR ACT AND REGULATED CONTRACTUAL RELATIONSHIP VIS-À-VIS THE DEFAULT PROVISION OF THE ACT

2.14.1 The Labour Act

The Act commenced its operation on 1st of August, 1971 and has since been amended. It protects certain categories of workers who are not in a position to make a fair bargain with the employer.

The Act does not extend to persons exercising administrative, executive, technical or professional functions as public officers, persons employed in a vessel or air craft to which laws of merchant shipping or civil aviation apply, or persons to whom articles or materials are given to be made up or cleaned or required in their own premises. Members of the employer’s family and persons employed otherwise than for the purpose of the employer’s business do not come within the contemplation of the Act.

The features of the Act include codification of the common law principles that contract of employment may be either contract for an indefinite period or for a fixed term or fixed amount of work, which may expire according to its terms. In cases of termination of employment, common employment is not a defense. Terms and conditions of employment are all provided for in the individual contract of employment. The default provisions can be modified by parties to a contract of employment based on the terms and conditions of employment. An example is section 11 of the Act on the requirement of notice for termination.

The relevant provisions are contained in section 54 to 56 of the Labour Act. Section 54 deals with maternity protection, section 55 with night work and section 56 with underground work. 54(1) (c) makes provision for maternity pay and section 56(1) prohibits engaging women in underground work. Note that female workers in the Public Service of the Federation are now entitled to sixteen

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182 See section 91 of the Labour Act, LFN 2004
183 See section 91 of the Act, Ibid
184 See section 91, Ibid
185 See section 11 of the Act, Ibid
186 LFN, 2004
weeks maternity leave with full pay. A woman on maternity leave should not be dismissed from her employment while on maternity, or given notice of termination during her absence, section 54(4). The Act section 91, defines a ‘worker’ as “any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour...” The exceptions to the section (i.e. persons not considered as workers) are itemized under subsections (a)-(f).

Section 7 of the Labour Act applies to anyone who falls within the definition of “worker”, all other workers are governed by the terms of their contracts of employment or any applicable instrument. The section stated alia:

(1) Not later than 3 months after the beginning of a worker’s period of employment with an employer, the employer shall give to the worker a written statement specifying

(a) The name of the employer or group of employers, and where appropriate, the name of the undertaking by which the worker is employed;
(b) The name and address of the worker, and the place and date of his engagement;
(c) If the contract is for a fixed term, the date when the contract expires;
(d) The appropriate period of notice to be given by the party wishing to terminate the contract;
(e) The rates of wages and method of calculation thereof, and the manner and period of payment;
(f) Any terms and conditions relating to:
   i. Hours of work, or
   ii. Holidays and holiday pays, or
   iii. Incapacity for work due to sickness or injury

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187 See section 91 of the Act, Ibid
188 See section 91 “worker” (a-f)
189 LFN, 2004
190 See section 7(1) (a-g) the Labour Act, LFN 2004.
**SUMMARY**

This chapter describes the nature and essential ingredients of a valid contract of employment. It also differentiates a contract of service from a contract for service; and examines the test developed by the courts for determining the employment relationship between the parties. The rights of the employees and the employers under both the statutes and the common law were also discussed.

**REVIEW QUESTIONS**

1. Write short notes on the following:
   (a) Contract of Service
   (b) Contract for Service
   (c) Who is a Servant?

2. Outline and discuss the essential elements of a valid contract of employment.

3. Discuss in detail the various tests used in determining the existence of master/servant relationship.

4. Discuss the rights/duties of an employee to the employer.

5. Outline and discuss the duties of an employer to the employee.

6. The concept of freedom of contract can be regulated by statute. To what extent do you agree with this statement?

7. Write short notes on the following:
   (a) Capacity to contract
   (b) The concept of decent work and contract of employment
   (c) The importance of Employee’s Handbook

8. The Supreme Court of Nigeria in *Shena Security Ltd v. Afropak (Nig) Ltd and 2 Ors* has identified factors which usually guide the court to determine the
nature of contract of employment between parties. List and discuss these factors.

9. Discuss the doctrine of vicarious liability as applicable to contract of employment.

10. Contract of employment can be express, implied or otherwise. Discuss

11. Write short notes on the following

   (i) Decent work
   (ii) Employees’ Handbook
   (iii) The ‘Form’ of contract of employment
CHAPTER THREE

THE CONCEPT OF LABOUR RIGHTS

LEARNING OBJECTIVE
At the end of this Chapter, Students/readers should be able to explain, appreciate and apply the following concepts.

(i) The concept called ‘Right’
(ii) Right to Work
(iii) Right at work
(iv) Right to Strike in Nigeria
(v) Unfair Labour Practice and Job Security
(vi) Social Security for Employees
(vii) Pension Reform Act, 2014

3.0 INTRODUCTION
“Rights” generally must be distinguished from “Fundamental Human Rights” Human Rights are classified into two. There are enforceable rights and the non-enforceable rights. The issues of workers’ rights have global dimensions and protections. No nation can operate contrary to international best practices without being stigmatized as an unfriendly labour community. Certain Labour rights such as Right to work, Right at work, Right to freedom of association, Right from employment discrimination, Right to equal pay, Social Security for Employees, Pension Reform Act, 2014.

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191 Chapter II of the Nigerian Constitution, 1999 as amended contains some Rights; these rights are headed with the caption Fundamental Objectives and Directives Principles of State Policy. Sections 13-18. They further classified as Political Rights/Objectives, Economics Rights, Social Rights, Cultural Rights and Educational Rights.
192 Fundamental Human Rights are those contained in the Chapter IV of the Nigerian Constitutions 1999 as altered
193 See Article 23.1 of the Universal Declaration of Human Rights, 1948; Articles 6.1; 811 International Covenant on Economic and Social Rights; Article 15 of the African Charter on Human and Peoples Rights and Section 17(3) (a) of the Nigerian Constitution, 1999 as amended.
195 See Section 40 of the Nigerian Constitution, 1999 as amended; Article 20, Universal Declaration of Human Rights, 1948; Article 10 of the African Charter on Human and Peoples
Right to collective bargaining, Protection of children and the young persons from forced labour and abuse. In addition, right to Social Security opportunities are central to labour rights. Local and international instruments provide for, and guarantee these rights. There is no way in which these rights can be examined without discussing other employment law issues such as occupational safety and some basic Fundamental Rights such as Right to Life which must not be jeopardized by any labour activities.

The importance of labour rights cannot be over-emphasized. Every worker’s pre occupation is job security, improved conditions of work, good remuneration, friendly work environment as against the hostile one; regular promotions and opportunities for on-job trainings in form of attending seminars, symposiums and even off-the-job training; protection from unlawful or wrongful termination of employment, just to mention a few. Both the employers and the state have

Rights; ILO Conventions 87 of 1948, and convention 98 of 1949. See also Osawe &Ors v The Registrar of Trade Union (1985) INWLR (pt 4)755


197 See Pollis V The New York School for Social Research, 132 F, 3D, 115 (2nd GR 1997 ILO Convention 100, (Equal Remuneration) of 1951 adopted on 29th June, 1951 at Genera, 34th ILO Session, came into force on 23rd May, 1953 and was ratified by Nigeria on 8th May, 1974

198 See International Labour Organization Convention 98 of 1949 which came into force on 18th July, 1951 and was ratified by Nigeria on 17th October, 1960.


200 See Pension Reform Act, 2014; Employee Compensation Act, 2010; ILO Convention No.155 of 1981 on Occupational Safety and Health;

201 See section 33, Constitution of the Federal Republic of Nigeria; 1999 as amended,

202 Hostile work environment is characterized by discrimination, sexual harassment related cases, and gender etc. See Harris V Forklift 510 US 17, 114 S Ct 367 (1993); Oncale V Sundowner Offshore Service, 118 S. Ct 1998,

203 See ILO Convention 158 on Termination of Employment; see Nwoke Rachael Nnennaya V Union Bank Plc Unreported suit No NICN/LA/153/2014 delivered on 2nd June, 2015 by Hon. Justice Oyewunmi O.O of the National Industrial Court, Lagos Judicial Division

204 The State here refers to the Federal Republic of Nigeria. See section 4 of the Nigerian Constitutions 1999 as amended on the Legislative power of the National Assembly to legislate
correlative and complimentary duties that are necessary for the enforcement of these labour rights.

Labour rights are not one sided, as both the employers and the employees have rights that are customarily and statutorily protected.

3.1 THE CONCEPT CALLED ‘RIGHT’

“Right” has been defined by many jurists from different schools of thoughts. Black’s Law dictionary defines right as ‘something that is due to a person by just claim, legal guarantee or moral principle’. For a right to be enforceable, such right must be legal. In Attorney General of Lagos State V Attorney General of Federation, Niki Tobi JSC answered the question; what is a legal right?

“What is a Legal right? A legal right in my views is a right cognizable in law. It means a right recognized by the law and capable of being enforced by the plaintiff. It is a right of a party recognized and protected by a rule of Law, Violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken.’

It is clear without equivocation that for a right to be enforceable, it must be cognizable in law. Thus, the labour rights are those contained in laws such as common law, statutory law or international laws/instruments. The word on the Exclusive Legislative List of the 2nd Schedule to the Constitution. Labour and productivity is on item 34 of the list.

See Salmond, Jurisprudence (Granville Williams 11th ed) Salmond defines right as an interest for which is a duty and disregard of which is a wrong. Right is a Vinogradoff, when a man claims something as his right, he claims of his own as due to him. Justice Holmes in American Bank & Trust C v Federal Reserve Bank of Atlanta, 256 U.S 350 (41 S. Ct.499, 65, LED 983) held that, there can be no right without a duty and vice versa.

School like the Positivists, naturalis, new-classical, moralist the contemporary school of thought sociologists, utilitarian’s etc; see Funso Adaramola (2008) Jurisprudence (Lexis Nexis) PPI-143.


(2005) 2 WRN pg 1 at PP 107-108, Lines 45-10

A.G Lagos V A G Federation(supra)

‘Labour’ can only be defined within the context of its usage. Labour refers to a class of persons who work for wages\textsuperscript{211} and not for profits. It also refers to workers considered as economic unit\textsuperscript{212}. However, employers’ right such as the right to hire and fire; summary dismissal for misconduct on the part of a worker are also rights.

The International Labour Organization is the body charged with the responsibility of setting standards\textsuperscript{213} for effective and efficient industrial and labour relations. These standards are referred to as International Labour Standard (ILS). ILS comprises of the Conventions and Recommendations adopted by members after an exhaustive deliberation at the International Labour Conference. The international labour organization has four core standards which all the conventions, protocol and declarations revolve round.\textsuperscript{214} They are\textsuperscript{215}

(a) Freedom of association and the effective recognition of the right to collective bargaining.
(b) The elimination of all forms of forces or compulsory labour.
(c) The effective abolition of child labour and
(d) The elimination of discrimination in respect of employment and occupation.

The following topics shall be examined hereunder: the right to work and the right at work which will include Right to form and join trade union, Right to Strike, Right from discrimination, and right from unlawful & wrongful or unfair termination of employment. Right of retirees under the Pension Reform Act, 2014, unfair labour practice and job security.

3.2 RIGHT TO WORK
The concept ‘right to work is wider than its semantic or phrasal connotation’;

\begin{itemize}
\item \textsuperscript{211} See Black’s Law Dictionary, Op. cit. 890
\item \textsuperscript{212} Ibid
\item \textsuperscript{213} See various ILO convention such as ILO convention 29 of 1930, on Forced Labour; ILO convention 87 Freedom Of Association And Protection Of The Right to Organize, 1948 S; ILO convention 98 Right to organize and collective Bargaining 1949, etc.
\item \textsuperscript{214} The ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards.
\item \textsuperscript{215} See Chapter Ten for a detailed discussion on the ILO conventions.
\end{itemize}
“... What exactly is meant by this concept of the right to work? Does it mean the right of the worker to work at his trade to the best of his ability without let or hindrance by others? Or does it mean the right of the worker to force himself upon an employer whether or not that employer wishes to engage the particular worker?”

A writer had posited that a person born into the world can live only by the sweat of his brow. The society owes him the opportunity to access a means of existence or livelihood, i.e. opportunity to work. Fundamental Human Right may be useless and unrealizable without access to a means of livelihood.

It appears there are pertinent questions to answers: if there exists right to work, who is to provide the work? Is the state bound to provide employment for all her citizens? Can a willing employee be forced on an unwilling employer? Can an employer use a discriminatory selection method that can be unfair to a job seeker? and finally, how can a job applicant or citizen enforce the so-called right to work? These questions can only be answered using constitutional, statutory and international Instrument provisions with decided case laws to provide answers.

Section 17(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended provides that:

“The State shall direct its policy towards ensuring that –
 a. All citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment”

Article 23:1 of the Universal Declaration of Human Rights 1948 provides that:

216 Agomo C.K. the Right to work and the Right to Strike in Nigeria, a paper delivered at the 21st Annual Conference of Law Teachers, 1983, page 4
218 Universal Declaration of Human Rights, 1948. The language of Article 23:1 of this Instrument makes right to work a fundamental right; however, the right is contained under chapter ii of the Nigerian Constitution which is non-justiciable by virtue of section 6(6)(c) of the same Constitution.
“Everyone has the right to work, to free choice of employment to just and favourable conditions of work and to protection against unemployment”.

The international Convention on Economic, Social and Cultural Rights (ICESCR) provide for right to work as including the right of everyone to the opportunity to earn his living by work which he freely chooses or accepts. Article II of ICESCR makes provision for right to an adequate standard of living that is unconditional, which does not depend on work.

The African Charter on Human and Peoples’ Rights equally provides for right to work. Article 15 provides:

“Every Individual shall have right to work under equitable and satisfactory conditions and shall receive equal pay for equal pay”

These international instruments provide for right to work and make it a fundamental right. However, under the Nigerian Constitution, the provision is under a non-justiciable chapter of the Constitution.

3.3 RIGHT AT WORK

Right at work arises after a person has been employed or engaged either on contract of employment at common law or on employment with statutory

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219 Article 6 of the ICESCR
220 Internal Covenant on Economic, Social and Cultural Rights
222 AFHPR, 1981 Ibid.
223 See ILO Convention 100, Equal remuneration Convention, 1951;
224 See chapter II of the Nigerian Constitution 1999 as amended.
225 Contract of employment is based on the terms of the agreement. In Union Bank v. Ogbor (1995) 2 NWLR (Pt 380) the Court held that any other employment outside the statute is governed by the terms under which the parties agreed to be bound as master and servant: see also Shuaibu v UBN (1995) 4 NWLR 173 CA; IBIEVNORE v NEPA (2004) NLLR (pt SC: Yusuf v Volkswagen (1996) 7 NWLR (Pt 463) 746 CA.
flavour. The rights include Right from Employment Discrimination as guaranteed by the Nigerian Constitution. Right from employment discrimination is wider than the scope envisaged by the constitution: The ILO Convention C111 of 1958 forbids discrimination of any kind. Thus, any discrimination based on gender/sex, wage discrimination, race, colour discrimination, race, colour of skin, religion etc would be considered as unfair labour practices and acts that contravene international best practices. It must be submitted that section 42 of the Nigerian Constitution can be expansively argued to cover work-place discrimination. Thus, a system that follows selective treatment of Employees when it comes to promotion or termination is discriminatory. In Rachael Nwoke v Union Bank Plc, the Court held:

“that the dismissal of the claimant by the defendant is wrongful, harsh and discriminatory and accordingly set abide”

226 Employment with statutory flavor is the type in which there are laid down procedures for hiring of the employee and the termination of the employee’s appointment.
229 See the case of Pollis v The New York School for Social Research, 132F, 3D 115 (2nd GR 1997) which illustrates wage discrimination. See also Applins v Race Relations Board (1976) AC 285 at 298 per Lord summons; Cray v Boren, 429, US 190, 975 Ct 451 (1976); Muller V Oregon, 208 US 412 (1908)
230 Pollis v The New School for Social Research (supra) see UK Equal Pay Act, 1970
231 In Kamanakao and Others v AG & Other (2002) AHRLR 35 (B W H C) 2001, the Court frowned at discrimination on the basis of tribe which has the resultant effect of unjust or preferential treatment.
233 Ibid. pg 20; The facts of the case revealed that the Claimant was wrongfully dismissed for an alleged fraud that occurred at the Defendant’s branch at Idimu; The names of three staffs, the Claimant, Chuks Elue and Musa Zubair featured in the Bank’s inquiry that the fraudsters used the password belonging to one of them to defraud the Bank of #61, Million. The suspects were later arrested; they made some refund and were later handed over to the police. The claimant was dismissed while the appointments of the other two staff were terminated with severance payments. The Defendant claimed that the Claimant compromised her password to the fraudsters without any evidence, whereas it was the Defendant’s E-server/system that was porous, slack and accessible to the fraudsters; the Court held the Defendant liable and set aside the dismissal to termination with severance payment.
If evidence could be adduced that there is discrimination at work-place, the court will not hesitate to find the Defendant liable.\(^{234}\)

Right at work includes right to equal pay or remuneration for equal job of equal weight. This right is provided for in the international instrument, the International Labour Organization (ILO) Convention 100 (C100) titled Equal remuneration of 1951\(^{235}\). Equal remuneration for men and women workers for work of equal value refers to remuneration established without discrimination based on sex,\(^{236}\) covers promotion at work\(^{237}\).

**Dignity of human person** as a fundamental right is extended to labour and work-environment generally\(^{238}\). No employee can be forced to do a job contrary to what is contained under the terms of employment.

*Every Worker/Employee or employer of labour has the right to form, join or partake in trade union activities. This includes the right to organize without any formal authorization. Both the Nigerian Constitution\(^{239}\) and the ILO Convention 87 titled “Freedom of Association and protection of the right to organize” of 1948 ILO Convention 98 ‘titled Right to Organize and Collective Bargaining, of 1949 guarantee the right to join or form trade unions.\(^{240}\) Thus, no employee can be sanctioned for exercising this fundamental right.*

It must be pointed out that the right to freedom of Association is not absolute as some classes of workers are exempted by statutes. For instance, Section 3(3) of the Trade Union Act excludes employees who are in the projection of the management from union membership. The law establishing the Nigerian Army, Navy, Air Force, the Nigeria Police, Customs & Excise, the Immigration

\(^{234}\) *Rachael Nwoke v Union Bank Plc (supra).*  
\(^{235}\) See Article 1 of the Convention which defines the term ‘remuneration’ to include ordinary, basic or minimum wage or salary and any additional emoluments whatsoever, payable directly or indirectly, whether in cash or in kind by the employer to the worker and arising out of the worker’s employment.  
\(^{236}\) See Article 1(b) of the C100 of 1951  
\(^{237}\) See Article 2(b) of the convention  
\(^{238}\) See section 34 of the Constitution of Nigeria, 1999 as altered  
\(^{239}\) Section 40 of the Nigerian Constitution guarantees this right, although, associations contemplated must be lawful. The provision does not cover association like secret societies.  
\(^{240}\) See section 12 of the Trade Union Act, 1976 and the Trade Union Amendment Act, 2005
Department, the Prison Service, the Nigerian Security Printing and the Minting Company Limited, the Central Bank of Nigeria, the Nigerian External Telecommunication Limited and any Federal or State Government establishment forbid the employees of these organizations from forming or joining trade unions. In fact, section 11 of the Trade Unions Act empowers the Minister of Labour and productivity to specify by order any such establishment from time to time.\textsuperscript{241}

3.4 RIGHT TO STRIKE IN NIGERIA

As earlier observed that workers/employees and employers have fundamental rights to freedom of expression,\textsuperscript{242} movement\textsuperscript{243} and right to peaceful assembly and association\textsuperscript{244}; these three rights cannot be fully exercised without a corresponding exercise of the right of organized labour to use pressure, picket or threats of strike to curry favours to their side. Right to strike has become a powerful tool for industrial negotiation worldwide, though, some have submitted that it should be the last option. It has been observed that improved working conditions have often been achieved through the exercise of this right.

The goal of every employer of labour is profit maximization. One of the ways to maximize profit is to minimize costs. Wages and salaries paid to employees are computed as cost of production. Thus, minimizing these costs implies that, if employers of labour have their ways, they will bargain for the least wage\textit{ ceteris paribus}. Labour (workers and their unions) on the other hand always endeavour to negotiate higher wages and minimum time at work.\textsuperscript{245} Disputes may arise because of this.\textsuperscript{246} The reconciliation of the extreme position of the workers and

\textsuperscript{241} By virtue of Trade Union (Prohibition) Federal Fire Service Order, LON 42 of 1976 members of the Nigerian Fire Service are prohibited
\textsuperscript{242} Section 39 CFRN 1999 as altered
\textsuperscript{243} Section 41 CFRN 1999 as altered
\textsuperscript{244} Section 40 CFRN 1999 as altered
\textsuperscript{245} Animashaun, O.O & Shabi O.R \textit{Fundamentals of Industrial Relations} (Hybrid, Lagos 2000) 4
\textsuperscript{246} The history of trade unionism in the U.K. between 1292 to 1305 showed that form workers collaborated and agitate for improved working conditions that necessitated the ordinance of conspirators, 1292, 1300 and 1305 which criminalized any combinations or concerted actions among workers. The Combinators Ordinance was followed by the Statute of Labourers, 1349, 1350 and 1351 which introduced the regulation of labour conditions and empowered justices of the peace to fix piece and work rates.
the entrepreneur is the central theme of industrial relations and the primary cause of dispute.\textsuperscript{247}

In the United Kingdom, the Peasant’s Revolt of 1389 was the first struggle between capital and labour. There was general protest about the living conditions of the peasants who took the brunt of the villeinage/serfdom system. Craftsmen and journey men began to help each other in negotiating for improved conditions of work notably in Agriculture. That led to the Combination Act of 1799/1800. Strikes and Industrial actions started on a rough ground of struggles, imprisonment and even tortuous liabilities. Strike action was found unlawful in the popular case of \textit{Taff Vale Railway Company Ltd V Almagamated Society of Railway Servants} \textsuperscript{248} where the court found trade unions liable to the sum of £23,000 for damages. The labour union reacted to \textit{Taff Vale’s} case with outrage. The U.K Trade Dispute (Amended) Act, 1927 made two types of strike illegal which were sympathetic strike and strike or lock down designed to coerce. The 1927 Act was repealed by the Trade Dispute and Trade Union Act of 1946.

In Nigeria, the Nigerian Labour Congress (NLC) and the Trade Union Congress (TUC) which are the two central labour organizations, championed, organized and led Nigerian work force on strikes times without number over matters considered to be of public concern\textsuperscript{249}. Sometimes strikes are embarked upon for matters of frivolities or striking for political reasons as against using ‘strike’ as the last resort after all other means specified in the statute had been exhausted. The Trade Dispute Act\textsuperscript{250} stipulates the steps to be taken to resolve disputes. The steps are as follows: workers and the management of the organization entering into collective bargaining toward resolving conflict internally.\textsuperscript{251} It is upon the failure of the attempt to settle the dispute that parties shall within 7 (seven) days of the failure meet either as a whole or through their representatives under a mediator mutually agreed upon and appointed by or on behalf of the parties with a view of amicable resolution of the dispute\textsuperscript{252}. If within seven days of the date in

\begin{footnotesize}

\begin{enumerate}
\item Animashaun, O.O & Shabi O.R op cit p 4.
\item (1900) A.C 406
\item In July 2011, NUT called of their six weeks nationwide which kept children in public schools at home. Prior to this members of the National Union of Petroleum and National Gas Employees (NUPENG) embarked on a strike that was aborted on the third day; 
\item TDA, T8 LFN, 2010
\item Section 4(1) TDA, T8, LFN 2010
\item Section 4(2) TDA, T8, LFN 2010
\end{enumerate}
\end{footnotesize}
which a mediator is appointed, the dispute has not been resolved, the dispute shall be reported to the Minister of Labour and Productivity by or on behalf of either of the parties within 3 (three) days of the end of the seven days\textsuperscript{253}. The Minister of Labour and Productivity is empowered by the statute to give time to the parties to the dispute within which any particular step must be taken in compliance with sections 4 and 8 of the Act\textsuperscript{254}. If the mediator fails, the issue should be taken to conciliator appointed by the Minister to resolve the dispute between the parties\textsuperscript{255}. If the dispute is not resolved, the conciliator shall within seven days forward his report to the Minister, intimating the Minister of the development\textsuperscript{256}. The Minister shall therefore within 14 days of the receipt of such refer the dispute for settlement to the Industrial Arbitration Panel (IAP) where an award shall be given\textsuperscript{257}. The Act further provide that if an issue arises as to the interpretation of the award, the minister or any party to the award may make an application to the National Industrial Court for a decision\textsuperscript{258}.

In some jurisdiction, strike actions are considered as breach of the contract of employment. Thus, when a trade union is calling for a strike, such by inference is calling for a breach of the contract of employment\textsuperscript{259}.

Strike is an indispensable industrial relation tool for negotiation, enforcing collective agreement, protection of the workers’ rights and so on.

The indispensability of strike in industrial relations was expressed in \textit{Croffer Hand Woven Harris Tireed Co v Veith}\textsuperscript{260} thus:

\begin{quote}
‘Where the rights of labour are concerned the rights of the employers are conditioned by the right of man to give or withhold their services. The right of workman to
\end{quote}

\begin{itemize}
\item \textsuperscript{253} Section 6(1) TDA, T8, LFN 2010
\item \textsuperscript{254} See Section 7 TDA, , LFN 2010
\item \textsuperscript{255} Section 8 TDA, LFN 2010
\item \textsuperscript{256} Section 8 (5) TDA, LFN 2010
\item \textsuperscript{257} Section 9 TDA, LFN 2010
\item \textsuperscript{258} Section 17 TDA, LFN 2010. The decision of the Court is final: see section 15(2) of the TDA
\item \textsuperscript{259} This is the position under the common law of England where contract of employment is seen as that which is between the employee and the employer; no third party (i.e. trade unions) is a privity to it.
\item \textsuperscript{260} (1942)1 All E.R 142 at pp 158-159 Per Lord Wright
\end{itemize}
strike is an essential element in the principle of collective bargaining. It is, in other words, an essential element not only of the union’s bargaining process itself; it is also a necessary sanction for enforcing agreed rules.  

3.4.1 Definition of Strike

Lord Dening MR in *Tramp Shipping Corporation v Greenwich Marine Inc* defined a strike action as:

‘A concerted stoppage of work by men done with a view of improving their wages or conditions of employment or giving rent to a grievance or making a protest about something or the other or supporting or sympathizing with other workers in such endeavors. It is distinct from stoppage brought about by external event such as a bomb scare or by apprehension of danger’

Section 48 of the Trade Dispute Act of Nigeria defines strike as:

“the cessation of work by a body of person employees acting in combination or a concerted refusal under a common understanding of any member of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employee or person or body of persons employed, to accept or not to accept terms of employment and physical condition of work.”

The Act defines cessation of work to include “deliberately working at less than usual speed or with less than usual efficiency”. The Act further defines refusal to continue to work to include “refusal to work at usual speed or with less than usual efficiency”.

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261 ibid
262 (1975) All E.R 898 at pg 990
263 See section 48, TDA, LFN 2010
264 See section 48(1)b
Applying the definition given by Lord Denning “with the use of concerted stoppage with the phrase” body of persons’ used by the Act, it goes without saying that a single employee cannot go on strike in law. But when an external event makes a group of persons to stop work, that would not amount to a strike; such external event include bomb scare, apprehension of danger from Boko Haram or other terrorist group or any life threatening thing. It must be pointed out that any dispute that does not fall within the definition of a ‘trade dispute’ cannot lead to a strike.

Although, right of organized labour to embark on, organize or participate in strike sounds more academic in view of statutory bottlenecks that must be removed before a strike can take place; the right to strike is fundamental and constitutional. Section 43(1) of the Trade Union Act provides:

“It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or registered Federation of trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attempt at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully persuading any person to work or abstain from working”.

The 1999 Constitution also guarantees the right to association, or freedom of expression to individuals or group of individuals as such any person may decide to or not to join trade unions or partake in strike actions or any union activity. Where any person disagrees with any labour union’s view or decision to embark on industrial action, such person’s right is equally guaranteed and cannot be intimidated for not joining strike or industrial action.

No law will permit or aid criminality; as such, anytime trade unionists pass their constitutional boundary by engaging in criminality, such acts shall be punished by the appropriate law and authority enforcing the law via the verdict of a court of law.

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265 See Tramp Shipping Corporation v Greenwich
266 See section 39, 40 & 41 CFRN, 1999 at altered. See also Crofter Harris Tweed Co v Veitch (supra). See Article 10 & 15 African Charter on Human and Peoples’ Right; Article 8(1)(d) of the International Covenant on Economic; Social and Cultural Right, which recognizes right of trade union to embark on strike.
competent jurisdiction. This position was summarized by Lord Halsbury in Mogul Steamship Co Ltd v McGregor, Gow & Company:267

“intimidation, violence, molestation or the procurement of people to break their contracts are all of them unlawful acts; and I entertain no doubt that a combination to procure people to do such act is a conspiracy and unlawful”

“Trade Union Immunity” Clause
Of importance is subsection 2 of section 43 of the Trade Union Act which provides:

“Accordingly, the doing of anything declared by subsection 1 of this section to be lawful shall not constitute an offence under any law in force in Nigeria or any part thereof and in particular shall not constitute an offence under section 366 of the criminal code or any corresponding enactment in any part of Nigeria.”268

This provision has been considered to be “trade union immunity” provision. However, some conditions must be met for the subsection to apply. The picketing must be in contemplation or furtherance of a trade dispute and it must be merely for the purpose of peacefully obtaining information or peacefully persuading any person to work or abstaining from work269. Thus, it is logical to conclude that once the picketing is not in contemplation of a trade dispute and the persuasion or demands have no nexus with a trade dispute, any crime committed shall not be immuned from prosecution. In Piddington v Bates270 the picketer who gently pushed aside a police officer was charged with obstructing a police officer in the lawful discharge of his duties, the Court convicted the picketer that, what he did came within the contemplation of the definition of ‘obstructing’ a police officer. On appeal, the appellate Court held that the police officer was perfectly doing his lawful duties when he directed that only two person should picket per door because the officer had suspected a likely breach of the peace if many persons were allowed to picket per door271.

267 (1892) A.C 25 at pg 37
268 Section 43(2) Trade Union Act, 1976, LFN 2010
269 See section 43(1) TUA
270 (1960)3 All E.R 60
271 The case of Garba v University of Maiduguri (1986) 1 NSCC 245 has established the law that students should not came together under the cover of unionism to engage in criminal acts of
On the civil liability on act done by a person in contemplation or furtherance of a trade dispute, this shall not be actionable in tort on any one or more of the following grounds only; that it induces some other person to breach a contract of employment; or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of capital or his labour as he wishes; or that it consists in his threatening, that a contract of employment (whether one to which he is a party or not will be broken; or that it consists in his threatening, that he will induce some other person to break a contract of employment to which that other party is a party. Any ground not mentioned in subsection 1 of section 44, Trade Union Act, shall be actionable in tort.

Section 24 of the Trade Union Act provides:

“An action against a trade union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade union dispute shall not be entertained in any Court in Nigeria”

Section 43 and 44 of the Trade Union Act differ in principle. The word ‘peacefully’ was used in section 43, while the word was omitted in section 44 which covers civil liability. The legal implication is that even if force is applied in furtherance of picketing in a trade dispute, an action in tort shall not lie against the person(s) or unionists who committed that civil wrong. Thus, section 44 is more lenient to unionists and picketers. It must be pointed out that section 24 and 44 of the

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See section 44(1) (a)-(d) Trade Union Act (TUA)

See section 44(2) Trade Union Act (TUA)

Section 24, TUA, subsection 2 provides that, subsection 1 of this section applies both to an action against a trade union in its registered name and to an action against one or more person as representatives of a trade union.
Trade Union Act have rendered nugatory some English Court decisions\textsuperscript{275} on the tortuous liability of trade unions and their personnel.

No employer can terminate the employment of any person for exercising his or her right to join trade union or participate in picketing\textsuperscript{276} or strike that falls within the definition of strike under section 48(1) of the Trade Dispute Act.

3.5 Unfair Labour Practice and Job Security
The phrase ‘unfair labour practice’ is wide and difficult to define. The Constitution of the Federal Republic of Nigeria being the grundnorm which other laws must conform with derides unfair labour practice\textsuperscript{277}.

The National Industrial Court of Nigeria has exclusive jurisdiction on all labour and employment matters and more importantly on matters relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relations matters\textsuperscript{278}. However, no statute has been able to define unfair labour practice. It appears, whatsoever violates international best practices will be unfair labour practice. The next question is; how do we measure international best practices? One of the ways in which international best practices can be determined is by checking through international instruments such as Universal Declaration of Human Rights, 1948; African Charter on Human and Peoples’ Rights; several International Labour Organizations Conventions and Protocols including labour oriented judicial decisions where unfair labour practices has been frowned at. Detailed discussion on these international instruments shall be dealt with in Chapter Ten.

\textsuperscript{275}See Rokes v Bernord (1964) A.C 129; Tarquary Hotel Ltd v Cousins (1969)2 Ch. 106; Daily Mirror Newspapers Ltd v Gardror (1968) Q.B 768. However, note that decisions in Strafford v Lindley (1965) A.C 304 which held that, acts of picketing that are permitted by statutes, even if, they are manifestly unlawful, are not tortuous or actionable

\textsuperscript{276}In Habbord v Pitt (1976) Q.B 142 per Lord Denning, the word picket was examined thus ‘the word ‘picket’ is used, no doubt, because of the example shown by workers who, in a trade dispute, picket in support of their demands...picketing a person’s premises (even if done with a view to compel or persuade) is not unlawful unless it is associated with other conduct (of) a nuisance in itself. Nor is it a nuisance for people to obtain or to communicate information....it does not become a nuisance unless, it is associated with obstruction, violence, intimidation, molestation or threats.

\textsuperscript{277}See section 254C (1)(f)

\textsuperscript{278}See section 254C (1)(f)
The concept of ‘job security’ connotes security of tenure in some senses, as it relates to the terms contained in the contract of employment. The security of tenure is governed by the nature of the employment and the length of notice required before the employment can be lawfully terminated.\textsuperscript{279} The fact that an employment is described as permanent or pensionable does not mean that it continues until the employee reaches the retirement age or dies in office.\textsuperscript{280}

3.6 SOCIAL SECURITY FOR EMPLOYEES

The concept of Labour Rights’ cannot be discussed fully without examining the Pension Reform Act, 2014 which is a social security statute. Social security or social protection includes the preventing, managing and overcoming situations that adversely affect the wellbeing of people. In this context, social security consists of policies and programmes aimed at the reduction of poverty. Protection of the vulnerable groups via the promotion of efficient labour market interactions to acquire equilibrium of labour market forces and more importantly, enhancing people’s capacity to manage economic and social risks such as unemployment, sickness, disability as a result of work-place accidents or industrial harms and old age\textsuperscript{281}.

Three main forms of social security have been identified: They are labour market interventions social insurance and social assistance. Labour market intervention refers to policies and programmes aimed at generating employment, the efficient operation of labour markets and the protection of employees’; it also involves policies designed that are used to help the unemployed and the most vulnerable groups find employment or improve their earning capacity. The active labour programmes include rendering employment services such as counseling, placement, job matching, labour exchanges and so on; job training such as vocational training and re-training for the employed, unemployed, workers in mass layoffs and youths in order to boost the supply of labour; and direct employment generation through the promotion of small and medium enterprises\textsuperscript{282}.

\textsuperscript{279} See Evans Bros v. Falaiye (2005) 4 NLLR (pt 9) 108 CA
\textsuperscript{280} Agomo C.K. op. cit. pg 157
\textsuperscript{281} See social protection–http://www.Ilo.org/global about-the-ILO/decent-work-agenda/social protections accessed on the 9\textsuperscript{th} day of January, 2017
\textsuperscript{282} See www.ilo.org-social protection op.cit
Passive labour market intervention includes unemployment insurance, income support, maternity benefits, injury compensation, minimum wage and provision for safe working conditions and environment.

Social insurance is a system of compulsory contribution to provide succor for workers in sickness, old age or unemployment etc.

The third aspect is the Social Assistance Schemes which are programmes designed to help the vulnerable groups such as single parents, victims of natural disasters, physically-challenged people, the poor or destitute households and communities in order to improve living standards.

Constitutional provision for social security and protection rights in Nigeria is covered by the chapter II of the Nigerian Constitution which is titled ‘Fundamental Objectives and Directive Principles of the State Policy’\(^\text{283}\). However, right to pension for public servants is constitutional as it is provided for under section 173 of the Constitution of the Federal Republic of Nigeria, 1999 as altered. Thus the legal framework for social security in Nigeria includes the Constitution of the Federal Republic of Nigeria, 1999 as altered, National Health Insurance Scheme Act, Employees Compensation Act, 2010, Pension Reform Act, 2014.

### 3.6.1. PENSION REFORM ACT, 2014

Pension caters for the welfare of retirees. It is a periodic income or annuity\(^\text{284}\) payment made upon retirement or after retirement to employees who have become eligible to the benefits through age, earnings and length of service. Black’s Law dictionary defines it as a fixed sum paid regularly to a person or to the

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\(^{283}\) See section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 as altered. The provisions under this chapter are non-justifiable. See also the report of the constitution Drafting Committee containing the Drafting Constitution vol. 1 of 1976, parag. 3. 1-3. 2; section 6(6)C of the CFRN 1999 as altered; Archbishop Okogie v AG Lagos State (1981)2 NCLR, 625 HC

\(^{284}\) Section 120 of the Pension Reform Act, 2014 defines annuity to mean a right to receive periodic payment, usually fixed in size for life or a term of years.
person’s beneficiaries especially by an employer as a retirement benefit\textsuperscript{285}. Pension is different from gratuity\textsuperscript{286}.

3.6.2. Historical Background of Pension Legislation in Nigeria
The history of Pension in Nigeria is traceable to the prolonged battle between workers and employers of labour. The 1951 Pension Ordinance was the first legislation to introduce pension in Nigeria. This was followed by the establishment of the National Provident Fund (NPF) in 1961 to provide for pensions of employees in the private sector. The Pension Act No 102 of 1979 was enacted, followed by the Armed Forces Pension Act No. 103 of 1979. In 1987, the Police and other Government Agencies Pension Scheme were established by the Pension Act, No.75 of 1987. The Local Government Staff Pension Board was established in 1987 to see to pension matters of local government employees. All these legal regimes were short-lived because of poor funding of the non contributory regime. This accounted for the Introduction of the National Social Insurance Trust Fund (NSITF) in 1993 to oversee and manage all pension and retirement matters in the private sector.

Pension in Nigeria had suffered many set-backs as a result of poor funding from the budgetary allocations. It was purely non-contributory when it was introduced. Thus, untimely death after retirement was witnessed as a result of delay in payments of pensions after retirement\textsuperscript{287}, inability to effectively implement budgets and make adequate pensions to cover the eligible pensioners\textsuperscript{288} and other short-comings led to the reforms of 2004 that introduced


\textsuperscript{286} Gratuity is a lump sum paid (in addition to pension a retiring employee especially under civil service – see P. Ramanathat Aiyenr, The Major Law Lexicon, 4th Edition 2010, Lexis Nexis, Butterworths.

\textsuperscript{287} retired employees encountered several hardships such as queuing up for days for screening; dying while waiting to be paid as a result of uncoordinated administration, inadequate funding, diversion of allocated funds and provision of pension for ‘ghost workers’ and ineligible pensioners on the pension pay-roll. See Dewale Adeleye Adekoyejo ‘Pensions in Nigeria, (2006) Crescent Law Publishing

The Pension Reform Act, 2004 introduced a system that was designed to be sustainable with an ultimate goal of providing a predictable, adequate and stable income for retirees. Thus, the introduction of Contributory Pension Scheme which is fully funded privately administered or managed with respect to individual’s pension account for both the private and public sectors’ employees in Nigeria. The 2004 Act established the National Pension Commission (Pencom) to regulate and supervise all pension matters in Nigeria. The 2004 Act was repealed by the Pension Reform Act, 2014.289

3.7. PENSION REFORM ACT 2014
The Act has fifteen parts. Part I contains the objectives and application of the Act. The objective of the Act is to establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for the public services of the federation including the Federal Capital Territory, State Governments, Local Government Councils as well as the private sectors290. The Act provides that the Act shall apply to any employment in the public service of the Federation including the FCT, State Governments, Local Government Councils and the private sectors291. The Act shall not apply to any private organization with less than fifteen (15) employees. However, employees of organization with less than three employees as well as self-employed persons shall be entitled to participate under the scheme in accordance with guidelines by the commission292.

Part II of the Act293 introduced Contributory Pension Scheme for payment of retirement benefit of employees to whom the schemes apply under the Act294. The Act specifies the minimum contribution by the employer to be ten percent and a minimum of eight percent to be contributed by the employee. The

289 The Explanatory memorandum to the Pension Reform Act provides “The Act repeals the Pension Reform Act, 2014 to continue to govern and regulate the administration of the uniform contributory pension scheme for both the public and private sectors in Nigeria.
290 See section 1(a) PRA, 2014
291 See section 2(1) of the Act. The Act here refers to the Pension Reform Act, 2014
292 See section 2(2) & (3) of the Act. The commission is established by virtue of section 17 of the Act.
293 Pension Reform Act, 2014
294 See section 3 of the Act. PRA 2014
percentage to the scheme can only be reviewed upward\textsuperscript{295}. An employee to whom the Act applies may make voluntary contribution to his retirement savings account\textsuperscript{296}. In addition to the rate specified, every employer shall maintain a group life insurance policy in favour of each employee for a minimum of three times the annual total emolument of the employee and premium shall be paid not later than the date of commencement of the cover\textsuperscript{297}.

The Act excludes certain categories of pension from the Contributory Pension Scheme. These are persons mentioned in section 291 of the Constitution\textsuperscript{298}, members of the Armed forces, the Intelligence and Secret Services of the Federation\textsuperscript{299} and any employee who is entitled to retirement benefits under the pension scheme existing before the 25\textsuperscript{th} day of June, 2014\textsuperscript{300}.

Part III of the Act deals with retirement benefits. A holder of retirement saving account shall upon retirement or attainment of the age of 50 years, whenever is later, utilize the amount credited to his retirement saving account by withdrawing a lump sum from the total amount credited to his retirement saving account provided the amount left after the lump sum withdrawal shall be sufficient to process a programmed fund withdrawals or annuity for life in accordance with extant guidelines issued by the commission from time to time\textsuperscript{301}. University Professors are covered by the Universities (Miscellaneous Provisions Amendment) Act, 2012 pursuant to the university Act. Employees who die while in service or get missing and not found within a period of one year from the date he was declared missing and upon the findings of a board of enquiry that the employee is presumed dead, section 8 of the Act shall apply\textsuperscript{302}.

Part IV deals with Retirement Saving account (RSA) which shall be maintained by every employee. Such account shall be opened or operated with a Pension Fund

\begin{footnotesize}
\textsuperscript{295} See section 4(1) B(2) of the Act\textsuperscript{297} \\
\textsuperscript{296} Section 4(3) of the Act\textsuperscript{297} \\
\textsuperscript{297} Section 4(5) of the Act\textsuperscript{297} \\
\textsuperscript{298} Constitution of the Federal Republic of Nigeria, 1999 as altered\textsuperscript{299} \\
\textsuperscript{299} Ibid\textsuperscript{300} \\
\textsuperscript{300} See section 5(1) of the Act; 25\textsuperscript{th} day of the June, 2004 was the commencement date of the Pension Reform Act, 2004 which introduced Contributory Pension Scheme\textsuperscript{302} \\
\textsuperscript{301} Section 7(1)(b) \\
\textsuperscript{302} Sections 8 and 9 of the Act; PRA 2014
\end{footnotesize}
Administrator of the employee’s Choice\textsuperscript{303}. It is the obligation of the Employee to notify the employer of the Pension Fund Administrator chosen and the details of Retirement Saving Account. Deductions and remittance of the deductions are to be made to the Pension Fund Administrators.

Part V of the Act, deals with the National Pension Commission\textsuperscript{304}, its composition, objects\textsuperscript{305}, and the Governing Board\textsuperscript{306}. Part VI deals with functions and powers of the commission\textsuperscript{307}. The primary function of the commission is to regulate and supervise the scheme established under the Act, issue guidelines, rules and regulations, approve, licence and supervise pension fund administrators, custodians and other institutions relating to pension matters, establish standards, benchmarks, guidelines, procedures rules and regulation for the management of the pension funds under the Act. The functions also include creation of national awareness and education on the establishment operations and management of the scheme among others\textsuperscript{308}. The commission has power to formulate, direct and oversee the overall policy on pension matters. Part VII deals with management and staff of the commission\textsuperscript{309}.

Part VIII of the Act deals with financial provisions which includes fund of the commission, it’s management, how proceeds of the funds established under the Act\textsuperscript{310} are applied and the need to prepare annual estimate of its income and expenditure not later than 30\textsuperscript{th} day of September of each year or any such time as may be required by the Financial Regulations\textsuperscript{311}. The Act mandates the commission to submit to the President and the Public Account Committee of the National Assembly a report on the activities and administration of the commission during the immediate preceding year\textsuperscript{312}.

\textsuperscript{303} Section 11 of the PRA, 2014  
\textsuperscript{304} Section 17 PRA, 2014  
\textsuperscript{305} Section 18 PRA, 2014  
\textsuperscript{306} Section 19 PRA, 2014  
\textsuperscript{307} See section 23 PRA, 2014  
\textsuperscript{308} Section 23(a) – (j) PRA, 2014  
\textsuperscript{309} See section 26-31, PRA, 2014  
\textsuperscript{310} Sections 32 and 33 PRA, 2014  
\textsuperscript{311} Section 34 PRA, 2014. Financial year of the commission shall start on the 1\textsuperscript{st} day of January of each year and end on the 31\textsuperscript{st} day of December of the same year; see also section 35, PRA, 2014  
\textsuperscript{312} Section 36 PRA, 2014
Part IX has transitional provisions for public sector. The Central Bank of Nigeria is empowered to establish, invest and manage a fund to be known as the Federal Government Retirement Benefit Board Redemption Fund also known as ‘Redemption Fund’ which shall be for Federal Public Service. The Federal Government is under a obligation to pay an amount not less than five percent of the total monthly wage payable to employees in the public service of the federation. The commission shall by the end of every calendar year determine the adequacy of the Redemption Fund against the projected liability of the Government arising from voluntary and mandatory retirements, death of employees in service and the rights of Pensioners to pension review in line with section 173(3) of the Constitution.

The Act also established the Federal Government Pension Transitional Arrangements Directorate referred to as Pension Transitional Arrangement Directorate (PTAD) which shall be an extra Ministerial Department under the Federal Ministry of Finance with management team to be appointed by the Minister. The Federal Capital Territory (FCT) has its Pension Transitional Arrangements Directorate known as FCT Pension Transitional Arrangement Directorates. Both the PTAD and the FCTPTAD shall determine and cause to be paid gratuity and pension to the pensioners in the category of officers exempted under section 5(1)(b) of the Act. It must be noted that the Commission has both regulatory and supervisory roles over PTAD and FCTPTAD.

Part X of the Act has transitional provisions for private sector. The Act specifically provides that ‘Notwithstanding any other provisions of the Act, any pension scheme in the private sector existing before the commencement of this Act may continue to exist provided that the existing scheme is fully funded and that

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313 Section 39 PRA, 2014
314 Section 173(3) of CFRN as altered provides, pension shall be reviewed every five years or together with any Federal Civil Service salary reviews, whichever is earlier. See Section 39 of the PRA, 2014
315 Section 42 of the PRA, 2014
316 Section 44 of the PRA, 2014
317 Section 46 PRA, 2014. Section 5(1)(b) of the Act, exempts any employee who is entitled to retirement benefits under any pension scheme existing before the 25th day of June, 2004, which as at that date has 3 or less years to retire.
318 Also known as PENCOM
contributions in favour of each employee including the attributable income shall be computed and credited to a retirement saving account opened for the employee.\textsuperscript{319}

Part XI has provisions for Pension Fund Administrators and Pension Fund custodians. The Act makes it mandatory for all Pension Fund Administrators to be licensed by the commission. The functions of the Pension Administrators include opening of Retirement Saving Account for all employees with Personal Identity Number (PIN) attached to the RSA; invest and manage Pension Funds and assets in accordance with the Act. All the activities of the Administrators shall be kept in books of account which shall contain all transactions relating to Pension Fund; provide regular information on investment strategy, market returns and other performance indicators to the commission, and employees or beneficiaries of the retirement savings account. The Pension Administrators shall also be responsible for all calculations in relation to retirement benefits.\textsuperscript{320}

Pension Fund and Assets are to be kept by Pension Fund Custodians licensed by the Commission.\textsuperscript{321} The custodian shall among other things receive the total contributions received by the employer under section 11 of the Act on behalf of the Pension Fund Administrators and credit the account of the Pension Fund Administrators immediately. The custodian shall also notify the Pension Fund Administrators within 24 hours of the receipt of the contributions from any employer and shall hold pension fund and assets in safe custody on trust for the employee and beneficiaries of the retirement saving account.\textsuperscript{322} It is mandatory for the commission to publish the list of Pension Fund Administrators and Pension Fund Custodians at the end of each calendar year\textsuperscript{323} in such manner as if

\textsuperscript{319}Section 50 PRA, 2014. The Defined Contribution Scheme (DCS) has not been abolished by the Act for private sector. An organization may opt out of the CPS provided contributions in favour of each employee are computed and credited to the employee’s retirement saving account. However such pension funds and assets of the organization (private sector) shall be fully segregated from the funds and assets of the company see section 50(1)(b). The pension funds and assets shall be held by a custodian. See also section 50(1)(d) which gives option of an employee having the freedom to exercise the option of coming under the scheme (CPS) established by the Act.

\textsuperscript{320}Sections 54 and 55 (a)-(h) PRA, 2014

\textsuperscript{321}Sections 56 PRA, 2014

\textsuperscript{322}Sections 57 (a)-(h) PRA, 2014

\textsuperscript{323}Sections 65 PRA, 2014
considered necessary\textsuperscript{324}. Both the Pension Fund Administrators and Pension Fund Custodian are under obligation to manage pension funds properly and in accordance with regulations and guidelines issued by the Commission\textsuperscript{325}. The Pension Fund Custodian has specific obligation of maintaining all funds and assets in its custody to the exclusive order of the relevant Pension Fund Administrator and the Commission\textsuperscript{326}.

In order to ensure proper and safe administration and custody of pension funds, the Act criminalizes non-compliance with the provisions of the Act especially sections 73, 74 and 75 of the Act with a penalty of #1,000,000 (One Million) Naira to the Commission on every violation\textsuperscript{327}.

Part XII of the Act provides for investment of pension fund; all contribution made under the Act shall be invested by the Pension Fund Administrators with the objective of safety and maintenance of fair return on amount invested\textsuperscript{328} in accordance with regulations and guidelines issued by the Commission from time to time\textsuperscript{329}. Some restrictions are placed on the types of investments or who to invest in its business or stocks\textsuperscript{330}.

\textsuperscript{324}The publication may be in printed material, newspapers, electronic media or any form as the Act provides for any such manner as it considers necessary.
\textsuperscript{325} See section 69PRA, 2014.
\textsuperscript{326} See section 70 PRA, 2014.
\textsuperscript{327} Section 76 PRA, 2014; section 73 provides for report of any fraud, forgery or theft in any Pension Fund Administrator or Pension Fund Custodian to the Commission. Section 74 provides for the notification to the commission of any dismissed staff or an appointment terminated or retires or resigns on the ground of fraud, misconduct or dishonesty. Section 75 of the Act provides that a Pension Fund Administrator or Pension Fund Custodian shall not employ any person whose name is on the list maintained by the commission under section 74(2) of the Act unless the commission gives approval.
\textsuperscript{328} Section 85(1) of the PRA, 2014.
\textsuperscript{329} Section 85(2) PRA, 2014. The mode of investment is provided for section 86 of the Act. Section 87 provides that such investment can be done outside Nigeria but must be within the categories of investments set out in section 86 such as bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank of Nigeria; bonds, bills and other securities issued by the state and local governments’ bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities and listed in a stock exchange registered under the investment and securities Act; ordinary share of public limited companies listed on a securities exchange registered under the Investment and securities Act; bank deposits and bank securities; real estate development investment; see section 56 (a)-(g).
\textsuperscript{330} Section 89 & 90 PRA, 2014.
Part XIII provides for supervision and examination which is the primary duty of the Commission. It supervises the Pension Fund Administrators, Pension Fund Custodians, Federal Pension Transitional Arrangement Directorate (PTAD) and the Federal Capital Territorial Pension Transitional Arrangement Directorate (FCTPTAD) for the purpose of ensuring compliance with the provisions of the Act.\(^{331}\) Examiners may be appointed to carry out these duties\(^{332}\).

Part XIV provides for offences, penalties and enforcement powers. In order words, the Act criminalizes the contravention of any of the provisions of the Act with penalties ranging from fines to term of imprisonment. Some offences carry as high as #1,000,000 (Ten Million) Naira as penalty\(^ {333}\). The Act provides for the prosecution of the offenders at a Court of competent jurisdiction\(^ {334}\).

\(^{331}\) Section 92 PRA, 2014  
\(^{332}\) Section 93 PRA, 2014 see also section 94-98  
\(^{333}\) Section 99 PRA, 2014. See also section 101 which provides that a Pension Fund Custodian who contravenes the provision of section 70 (using pension fund to meet the custodian’s own financial obligations to any person whatsoever) of the Act commits an offence and is liable in conviction to a term of not less than #10,000,000 and each of its director or principal offices is liable to a fine of not less than #5,000,000 or a term not less than 5 years imprisonment or to both such fine and imprisonment. This is a good law, it will aid financial prudency and accountability.  
\(^{334}\) Section 105 PRA, 2014; however, section 120 defines a Court of competent jurisdiction to mean Federal High Court, High Court of the Federal Capital Territory High Court of a state and the National Industrial Court. With due respect to the drafters of the legislation, and the National Assembly, the Court of Competent jurisdiction is the National Industrial Court and not any other court. The Pension Reform Act, 2014 cannot override the constitution. The National Industrial Court has exclusive jurisdiction to the exclusion of all other Courts as far as labour, employment or industrial relation matters are concerned. This is the spirit of section 254C (1) of the Constitution of the Federal Republic of Nigeria, 1999 as altered. Apply the rule of law enshrined in section 1 (3) of the same constitution to section 120 of the PRA, 2014, the provision of the PRA, 2014 is inconsistent with the constitution as such it is null and void to the extent of its inconsistency.
Part XV provides for miscellaneous such as dispute resolution, Arbitration and arbitral awards, the application of the public officers protection Act to the employees of the commission. The Act sets out the limitation periods for the commencement of action against the commission. Section 120 of the Act defines all necessary terms, words and phrases and bodies concerned with the administration of the Act.

SUMMARY

This chapter discusses the concept of right, and distinguishes between right to work and the right at work, as well as the right of the workers to strike. The unfair labour practice and the social security for the employees were exhaustively discussed. The Pension Reform Act of 2014 was also discussed in this chapter.

REVIEW QUESTIONS

a. Examine with relevant statutory provisions, the usefulness of the concept called ‘right’ to labour relations.

b. ILO has set standards and recommendations. Identity and discuss the four core ILO standards that are the bedrocks of all the conventions and declaration.

c. Discuss the scope and context of right to work in Nigeria.

d. The right to work can be enforced in Nigeria. Discuss

e. Workers/Employees have rights at work. Do you agree?

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335 Section 106 PRA, 2014
336 Section 107 PRA, 2014
337 Section 108 PRA, 2014
338 See section 109(1) PRA, 2014 practitioners should be aware of the need for ‘Pre-action Notice’ before any action can be commenced against the commission service of process is by delivery to the Director-General, Secretary or any principal offer our by sending it by registered post addressed to the Director-General or secretary of the headquarters of the commission. See section 10 of the PRA, 2014.
f. Examine the scope and extent of right to strike in Nigeria.

g. The phrase ‘unfair labour practice’ is wider enough to protect all categories of employees. To what extent do you agree with this statement?

h. Discuss the innovations introduced by the Pension Perform Act, 2014.

i. Discuss the extent of trade union criminal and civil immunity when exercising their right to strike.

j. Discuss briefly the functions of Pension Fund Administrators and Pension Fund Custodians under the Pension Reform Act, 2014.

k. Examine critically the powers and functions of Pension Commission under the Pension Reform Act, 2014.

CHAPTER FOUR

TERMINATION OF EMPLOYMENT

Learning Objective
At the end of this chapter, readers/students should be able to appreciate and explain the under-listed concepts and apply them to industrial relations.

(i) Concept of termination of employment.
(ii) Different ways of terminating contracts of employments.
(iii) Termination by operation of law
(iv) Common law termination of employment
4.0. INTRODUCTION
Contract of employment whether private or public creates a relationship between an employer called master and an employee otherwise known as servant. The bringing a relationship to an end is what is known as termination of employment. There are several ways by which a contract of employment can be brought to an end. This is a function of the type of employment involved.

In *Faponle v. U.I.T.H.M.B*\(^ {339}\) the Court of Appeal identified three categories of employment. They are:

(i) Contract under the common law, which is based on the terms contained in the contract of employment. The employment can be terminated by either of the parties by the giving of the requisite notices or a payment in lieu of notice; and where the contract is in writing, the Court has the obligation of interpreting the contract and confines itself to the terms of the written contract.
(ii) Where the contract is covered by statute.\(^ {340}\)
(iii) Where the employment is that of servants covered by the civil service rules and the constitution\(^ {341}\).

It must be emphasized that these three classifications could be reduced to two. The 1\(^ {st} \) is considered as common law employment or employment by government by the terms and conditions contained in the contract. The 2\(^ {nd} \) and 3\(^ {rd} \) types are known as employment with statutory flavor. Employment with statutory flavour is a situation in which the laid down rules, regulations, and procedures for terminating must be strictly followed before such an employment can be validly terminated. In most cases the constitutional requirement of fair hearing must be followed. Any termination outside these procedures will be a nullity\(^ {342}\).

\(^{339}\) (1991) 4 NWLR (pt 183 pg 43 at pg 6
\(^{340}\)See *Olaniyan v. University of Lagos* (1985) 2 NWLR (pt 9) pg 559
\(^{342}\)See *Shitta Bey’s case* (supra) *Olaniyan’s case* (supra). In *Imoloame v. WAEC* (1992) 2 NSCC 374 at pg 383 Karibi – Whyte JSC held ‘It is now accepted that where the contract of service is governed by the provisions of statute or where the conditions of service are contained in regulations derived from statutory provisions, they invest the employees with a legal statues
4.1 Ways of Terminating a Contract of Employment

There are six ways of terminating a contract of employment. They are:

(i) Termination by Notice
(ii) Termination by Performance
(iii) Termination by Death
(iv) Dismissal/Summary Dismissal
(v) Termination by Operation of Law
(vi) Repudiatory Breach

4.1.1 Termination by Notice

(i) The Labour Act provides that:

“a contract of employment shall be terminated by notice in accordance with section 11 of the Act or in any other way in which a contract is legally terminable or held to be terminated."

This type of termination is common to all common law employments. The contract would have provided that either of the parties may terminate the relationship by giving a requisite period of notice or payment of salary in lieu of notice. It is customarily the practice of employers to give salary in lieu of notice. The provision for notice in the labour Act is default in nature as against mandatory provisions that cannot be modified by parties. Thus, where parties have not agreed as to the length of period of notice required for termination, then, the Labour Act will apply. Section 11 (1) of the Act provides:

higher than the ordinary one of master servant. They accordingly enjoy statutory flavor. See also Fakuade v. OAUTH (1993) 5 NWLR (pt 291)47; UNTHMB v. Nnoli (1994)8 NWLR (Pt 363)376.

343 See section 9(7) of the Labour Act, LFN, 2004
344 See section 11 of the Labour Act, LFN, 2004
345 Labour Act, LFN, 2004. There is a clear difference between 30 days and one month. In Adeniran Adeyemo v. Oyo State Public Service Commission (1978)2 LRN 268, the contract of employment provided for a notice of one month for its termination. It was held that there is a difference 30 days and one month’s notice. Fakayode C.J held “that notice of termination of the plaintiff’s appointment by means of 30 days notice was ineffective.”
Either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so.

(ii) (2) The notice to be given for the purpose of subsection (1) of this section shall be:

(a) One day where the contract has continued for a period of three months or less;

(b) One week, where the contract has continued for more than three months but less than two years;

(c) Two weeks, where the contract has continued for a period of two years but less than five years; and

(d) One month, where the contract has continued for five years or more

The period stated above does not include the day in which the notice is served on the other party. Any notice for a period of one week or more shall be in writing. In other words, a verbal notice is a nullity. The right to notice is waiveable; so also the right to salary in lieu of notice can be waived. Any employee who has accepted salary in lieu of notice cannot later challenge his termination based on non-issuance of notice.

In absence of any clause on notice, the court may construe the common law principle of reasonable notice should be inferred by the Court.

346 See section 11(4) of the Labour Act, LFN, 2004
347 See section 11(3) of the Labour Act, LFN, 2004
348 Section 11(6) of the Act
350 In Honika Sawmill (Nig) Ltd v. Mary Okojie (1992) 4 NWLR (pt 238), 673 at 682 per Adio JCA, as he then was, it was held “where there is no express or specifically implied provision for the termination of an appointment by notice, the common law will imply a presumption that the appointment is terminable by reasonable notice being given to either party. The length of
4.1.2 Termination by Performance

Where a contract of employment is for a specific task or period of time, it is trite that upon the performance of the task or expiration of the period contained in the contractual agreement, the contract will be deemed to have been terminated. Section 9(7) of the Labour Act provides:

“A contract of employment shall be terminated by

(a) The expiration of the period for which it was made;
‘Contract staff’ employment is common in some private sectors like the banking, where duration of the employment is clearly stated, once the period expires, the contract is terminated by effluxion of time. The other part of it is situations in which the task or job to be performed is clearly stated. Once the job has been performed satisfactorily, the appointment is terminated.

4.1.3 Termination by Death

Section 9(7) (b) of the Labour Act provides:

A contract shall be terminated
(b) By the death of the worker before the expiry of that period.

The death of the employee will naturally terminate the employment relationship. However, the Act further protects the late employee by providing for service security benefits for his/her dependants thus section 9(8) of the Act provides:

“The termination of a contract by death of a worker shall be without prejudice to the legal claims of his personal representatives or dependants\(^\text{351}\).”

notice that may be regarded as reasonable depends on the intention of the parties as revealed by the provision of the contract. All the circumstances of the case, such as the type of employment, the intervals at which the remuneration is paid or the period in relation to which the remuneration is stated have to be considered.

\(^{351}\) See section 17 of the Employees Compensation Act, 2010
Section 17 of the Employees’ Compensation Act, 2010 provides for scale of compensation where death results from the injury of an employee, compensation shall be paid to the dependants of the deceased.\(^{352}\)

4.1.4 Dismissal/Summary Dismissal
According to Black’s Law Dictionary\(^{353}\) to dismiss means ‘to release or discharge a person from employment while ‘dismissal’ is termination of an action or claim without further hearing especially before the trials of the issues involved. Applying this definition to dismissal of an employee, no right of audience is given to such an employee. The ‘dismissal’ of an employee by an employer is a right exercisable when the employee is involved in acts considered as a misconduct. Where this right is exercised without any notice whatsoever, it is called “summary dismissal”.\(^{354}\)

Summary dismissal is employed when the conduct of an employee is of grave and weighty character.\(^{355}\) It may arise from situations where an employee continues to disobey the lawful orders of his employer. Thus, where such employers exercise the right of dismissing the employee summarily, such master will be justified. The continuous disobedience to employer’s instructions may include refusal to perform his/her duties as an employee.\(^{356}\) In Callo v Brounder,\(^{357}\) it was held that if there was any moral misconduct either pecuniary or otherwise, willful disobedience or habitual neglect, the defendant should be at liberty to part with the plaintiff. In Union Bank v. Chukwuelo Charles Ogboh\(^{358}\), the dismissal of the employee was affirmed as his claim for wrongful dismissal failed.

The right of the employer to dismiss summarily was also affirmed in Abomeli v NRC\(^{359}\), the Court of Appeal held that misconduct of any kind can justify dismissal.\(^{360}\) In Omojuyigbe v. NIPOST,\(^{361}\) it was held that an employer is not

\(^{352}\) See detailed scale of compensation in the ECA 2010; section 17(1)(a)-(g)
\(^{354}\) See Maja v Stocco (1998) NWLR, 372 at 379
\(^{355}\) See Union Bank v. Ogboh (1995)2 NWLR (pt 380)
\(^{356}\) Spain v. Arnoh (1917) 2 Stacke 256
\(^{357}\) (1831) ER 307 Per Peter J.
\(^{358}\) Supra
\(^{359}\) (1995) 1 NWLR (pt 372) 451
\(^{360}\) See Ante v. University of Calabar (2001) 3 NWLR (pt 700) 239
bound to give reasons for terminating the appointment of an employee, but where the employer dismisses on acts of gross misconduct, the onus is on the employer to satisfy the Court that the employee’s dismissal is justifiable.

Another act of an employee that may constitute misconduct includes negligence. Unlawful dismissal or wrongful dismissal may arise where the terms of the contract of employment specifically lay down some procedures to be followed for dismissal and such procedures are jettisoned. Summary dismissal will be unlawful where its exercise by the employer fails to be in accordance with law whether statutory or common law; it will be wrongful where the dismissal fails to follow the laid down procedures for the exercise of the right to dismiss summarily.

4.1.4 (a) What Constitutes Misconduct
It is customary to have a list of acts that constitute misconduct. Sometimes, the acts are contained in the employees’ Handbook or staff manual but the list is not exhaustive. The word ‘misconduct’ has not been defined by any statute. Sometimes, misconduct may mean what the employer calls misconduct. However, the test for determining misconduct is objective and not subjective. Some of the acts that constitute misconduct have been identified to include infidelity, dishonesty, insubordination, bribery, corruption, making secret profits, revealing trade secrets, willful disobedience to lawful orders, dereliction of duty, connection upon being tried for a criminal offence, negligence, incompetence, etc. The list is open-ended.

A single act of misconduct may justify summary dismissal. In Ajayi v Texaco Nig. Ltd, it was held that there is no fixed rule of law defining the degree of misconduct which would justify dismissal. It is enough that the conduct of the servant is of grave and weighty character as to undermine the confidence which would exist between a servant and his master.

361 (2010) 239
363 See Abenga v. BSJSC (2006) 14 NWLR (pt 1000) 610
364 (1987) 3 NWLR, 63
365 See Oyedele v. University of Ife Teaching Hospital (1990) 6 NWLR (pt 155) at pg 194
The common law employment differs from the statutory employment in the sense that, under the common law, wrongful dismissal attracts only award of damages and not reinstatement\textsuperscript{366}. However, under statutory employment, unlawful dismissal attracts both damages and reinstatement\textsuperscript{367}.

4.1.4 (b) Dismissal and the Rule of Natural Justice

Fair hearing is a constitutional right that is provided for under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. It encompasses the twin-pillar of \textit{Nemo juddex in causa sua} (You cannot be a judge in your cause) and \textit{Audi Alterem partem} (you must hear the other party). At common law, the rule is that, employer is not bound to hear the employee in allegation of misconduct before the employee can be sacked. In \textit{Udemah v. Nigeria Coal Corporation}\textsuperscript{368}, the Court of Appeal held that the rule of natural justice is inapplicable to master/servant relationship, where the terms and conditions of the contract are strictly adhered to. The courts however, sometimes hold that the rule of natural justice apply to master/servant relationship, as held in \textit{Aiyetan v NIFOR}\textsuperscript{369} and \textit{Awobokun v Sketch Publishing Co.}\textsuperscript{370} Also in \textit{Afribank (Nig) Plc v. Nwanze}\textsuperscript{371}, it was held that, before an employer can dispense with the services of his employee, all he needs is to afford the employee an opportunity of being heard before exercising his power to terminate the appointment even where the allegation for which the employee is being removed involves accusation of crime\textsuperscript{372}.

In employment with statutory flavour, it is settled law that the rules of natural justice must be followed when allegation of crime of misconduct is involved. In \textit{Sodiq v. Bundi}\textsuperscript{373}, it was held that the body vested with quasi-judicial powers exercising power of dismissal need to conform to rules of natural justice. In \textit{Igwilo v. CBN}, \textsuperscript{374} it was held that the essence of fair hearing is that ‘no man should be

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{366}Ridge v Badwin (1964) AC 40-62
\item \textsuperscript{367}Shitta Bey v. FPSC (supra); Olaniyan v. University of Lagos (supra)
\item \textsuperscript{368}(1991)
\item \textsuperscript{369}(1987) 3 NWLR 88
\item \textsuperscript{370}(1973) 3MILR 502
\item \textsuperscript{371}(supra)
\item \textsuperscript{372}See University of Agriculture Markudi v. Jack (2000) 1 NWLR (pt 679) 658; JSC v. Omo (1990)6 NWLR (pt 157) 407 at 490
\item \textsuperscript{373}(1991) 8 NWLR (pt 210) 443
\item \textsuperscript{374}(2005) 2 NCLR (pt 6) 377
\end{itemize}
\end{footnotesize}
condemned unheard or without being given an opportunity to be heard as this is one of the pillars of justice based on the rule of law\textsuperscript{375}.

4.1.4 (c) Remedies for Wrongful Dismissal

The measure of damages for wrongful termination of employment is that the employee is only entitled to salaries and benefits he would have earned within the period of notice as contained in the contract of employment i.e. the salary and benefits for the contractual notice period\textsuperscript{376}.

The damages recoverable may, however, include legitimate entitlements such as allowances, commission, bonus, pension and gratuity which have accrued at the time of the wrongful termination of the contract\textsuperscript{377}.

As earlier observed, order of specific performance cannot be given against a master that has ended the master/servant relationship with his employee.\textsuperscript{378} The appropriate remedy for wrongful dismissal is damages.

The general rule is that measure of damages is the amount the employee would have earned under the contract for the period until the employer could validly have terminated it, less the amount the employee could reasonably be expected to earn in other suitable employments because the dismissed employee, like any innocent party following a breach of contract by the other party, must take reasonable steps to minimize his loss\textsuperscript{379}.

However, the long settled principle of law is that a wrongfully dismissed employee cannot recover damages for loss of reputation and injury to feelings\textsuperscript{380}.

\textsuperscript{375}See Amokeodo v. IGP (2005)3 NCLR (Pt 7) 28.
\textsuperscript{378}See Onwuneme v. ACB Plc (1997)12 NWLR (Pt 53) 150, the appropriate remedy for wrongful dismissal is damages.
\textsuperscript{379}See NBC v. Adeyemi, unreported Appeal No. SC/45/1969
\textsuperscript{380}See Addis v. Gramaphone Co. Ltd (1909) AC 488; Shell v. Lawson Jack (1998) 4 NWLR Pt. 545
On whether or not specific performance (reinstatement) will be ordered against an employer or master who ended the master/servant relationship wrongfully, in *Onwuneme v. ACB Plc*<sup>381</sup>, it was held that specific performance of contract of service will not be ordered by the Court where the master-servant has ended, to do so would be tantamount to forcing a willing employee on an unwilling master. The Court would not make an order it could not enforce<sup>382</sup>. There is a special remedy applicable in contacts of employment with statutory flavor<sup>383</sup>.

It is very hard for the Court to order reinstatement in private sector employment relationship. However, it is instructive to note that for the first time, the Supreme Court made an order of re-instatement in the private sector in the case of *Longe v. First Bank of Nigeria Plc* (Supra), and laid down clearly the procedure for removal of Chief Executive Officers as contained in section 266(3) of CAMA<sup>384</sup>. It appears this cannot be a general precedent for reinstatement in private sector employment relations.

### 4.1.5 Termination by Operation of Law

A contract is determined by operation of the law if it is effectively terminated against the intention of the parties. At common law, frustration can therefore determine contract of employment. Frustrating circumstances are those occurrences which makes the performance of the contract impossible by any of the parties. They include an outbreak of war in *Brown v. Haco Ltd*<sup>385</sup>. Where the plaintiff traveled to the East and the civil war caught up with him by the time he found his way back to the Nigerian side, it was held that his contract had been frustrated. Change in the law, death of either party, or sickness does not necessarily bring a contract of employment to an end. Facts to consider under sickness are, duration and nature of the sickness, length of service of the employee, position occupied by the employee. Illness covering a period of one or two years has been held not to have frustrated a contract; while another lasting about one year was held to have frustrated it.

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<sup>381</sup>(1997)12 NWLR (Pt 53) 150


<sup>384</sup>See companies; An Allied Matters Act, LFN, 2004

<sup>385</sup>(1970 2 All NLR 47
4.1.6 Repudiatory Breach
The doctrine of repudiatory contract is of the effect that a unilateral breach of the fundamental term of the contract by one party in such a way that the party who is in breach shows an intention that he is no longer bound or to be bound by the terms of the contract. It is doubtful whether this concept applies to contract of employment. Thus, if an employee breaches the terms of the contract of employment, can the employee rely on such breach and say that he is no more under the control of the employer. Ogunniyi\textsuperscript{386} opined that, “it now appears clear for all practical purposes that a contract of employment cannot effectively be determined by a unilateral repudiatory breach; in fact, this right is hardly exercised in practice\textsuperscript{387}.”

4.2 TERMINATIONS OF COMMON LAW EMPLOYMENT AND EMPLOYMENT WITH STATUTORY FLAVOUR

4.2.1 Termination of Common Law Employment
The rule of law here is ‘he who hires can fire”. In Maiduguri Flour Mills \textit{v. Abba}\textsuperscript{388}, it was held that at common law a master may terminate a contract of employment with or without notice and without ascribing any reason for the termination\textsuperscript{389}.

But nowadays the power to fire is subject to the contractual terms such as “requirements of notice and right to be heard”. The dual-pillar of \textit{Audi-alterem partem} (meaning-Hear the other party) and \textit{Nemo judex in causa sua} meaning-(No one can be the judge in his own cause); cut across all aspects of law, whether contract, administrative or labour relations. Thus, the court will apply strict rule of interpretation of the terms\textsuperscript{390}.

\textsuperscript{386}Op.cit
\textsuperscript{388}(1996) 9 NWLR (Pt 483) 506
\textsuperscript{389}See the following cases on this principle. \textit{John Holt Ventures Ltd Oputa} (1996) 9 NWLR (Pt 470 101; \textit{Maja v. Stocco} (1969) 1 All NLR 141 at 161; \textit{Ajayi v. Texaco Nig Ltd} (1987) 3 NWER 577.
\textsuperscript{390}See Nfor \textit{v. Ashaka Cement Co. Ltd} (1994)2 NWLR (Pt 319) 222. See also Honika Sawmill Ltd \textit{v. Hoff} (1992)4 NWLR (Pt 238) 673 on reasonable notice.
In *Union Bank v. Ogboh*\(^{391}\), the court held that any other employment outside the statute is governed by the terms under which the parties agreed to be bound as master and servant.

The rights and duties of both the employer and the employee when terminating the relationship are determined by the terms of the agreement; in *Katto v. CBN*, \(^{392}\) it was held that courts may not look outside the terms of the agreement when deciding on matters that are central to the terms of the agreement or contract of employment especially master/servant relationship. In *Uwagbanebi v. NPPB* \(^{393}\), it was held that power to terminate appointment is reserved for the master and that ground for termination, when stated in the condition of service must be strictly adhered to\(^{394}\).

The contract of employment can be terminated at any time including during probation. \(^{395}\) Another fundamental question could be raised. Can an employment for a fixed term be lawfully terminated before the expiration of the contract? In *Swiss Nigeria Wood Industries Ltd v. Bogo* \(^{396}\), the respondent was engaged for a fixed period of 2 years, but had his conduct terminated after 6 months. The Supreme Court held that the company is liable to pay the respondent the full salary he would have earned for the unexpired period of 14 months\(^{397}\). Any termination outside the agreed terms will be considered as wrongful dismissal. We shall discuss wrongful dismissal in this chapter.

### 4.2.2 Termination of Employment with Statutory Flavour

A contract of employment is said to be with statutory flavor where it is a creation of statute. This is usually employment in the public sector. However, the recent Supreme Court decision in *Longe v. First Bank* proved to be an exception.\(^{398}\)

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\(^{391}\) (1998)4 NWLR (Pt 547) 608  
\(^{392}\) (1996)6 NWLR (Pt 607) 390  
\(^{393}\) (1986) 3 NLWR (Pt 29) 489  
\(^{394}\) See *British American Ins. Co. v. Omolaye.* (1991)2 NWLR (Pt 187) 65  
\(^{396}\) (1970) 1 UILR 337  
\(^{397}\) See also *NPA v. Banjo* (1972)2 SC 175; *Adejumo v. UCHMB* (1972) UILR 145. It is trite law that any  
\(^{398}\) (2010) 6 NWLR (Pt 1189).
Termination of employment with statutory flavour is governed by the laid down procedure for termination. Employees may only be validly dismissed by complying strictly with the procedure prescribed in the enabling statute. Failure to do so will render the purported dismissal as unlawful, null and avoid and the employee will be entitled to be reinstated.

In *Shitta Bey v. Federal Public Service Commission*\(^{399}\), the Supreme Court of Nigeria held that civil servants were not employed at the pleasure of the Federal Government and that civil service rules invest in these public servants a legal status and they can be legally and properly removed only by and as provided in the said rules. In *Ofomaja v. Commissioner of Education, Edo State*\(^{400}\), the court found in favour of the employee that he was wrongfully dismissed and was held to still be in the service of Edo Civil Service because laid down procedures for termination were not followed and that the employee was not given fair hearing.

A plethora of judicial authorities have supported the principle of law that employment with statutory flavor guarantees job security to some extent;\(^{401}\) in *UNTHMB v. Nnoli* (supra) it was held that termination of the employment of the employee must comply with the procedure laid down under section 9(1) of the University of Nigeria Teaching Hospital Management Board Decree No 10 of 1985.

In *Okhomin v. Psychiatric Hospital Management Board*\(^{402}\), the Court of Appeal laid down the conditions in which a person seeking a declaration that the termination of his employment is a nullity. These conditions are called material facts required to be pleaded; they are:

(i) that he is an employee of the defendant

(ii) he must show how he is appointed and the terms and conditions of his appointment;

(iii) he must establish who can appoint and remove him;

(iv) he must establish the circumstances under which his appointment can be terminated; and

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399 (1981)1 SC 40 at 57-58
400 (1995)8 NWLR (Pt 411) 69
401 See *Olaniyan v. University of Lagos* (1885)2 NWLR (Pt 9) 598; *Olatunbosun v. NISER* (1996) 3 NWLR (Pt 29 435; *Baba v. Civil Aviation* (1986)5 NWLR (Pt 42) 514 CA;
402 (1997( 2 NWLR (Pt 485) 75
that his appointment can only be terminated by a person or authority other than the defendant. 403

In Achimugu v. Minister of Federal Capital Territory, 404 a public officer who was compulsorily retired at the age of forty-two before attaining the minimum age of forty-five (45) prescribed for compulsory retirement of servants was awarded salaries for the three years he was denied. The court considered section 3(2) and (b); 4(2) at 24 of the Pension Act as ratio for reaching its decision.

Where no special procedure is contained in the conditions of service of a public servant, the employer may still be able to determine the employment with or without notice and may be liable to pay only the arrears of salary which might have become due to the servant as at the date of termination. 405 Requirement of notice by either party is a condition precedent; failure to give notice will render the termination a nullity in law and equity. 406 Thus, any termination that violates the principles espoused above will be set aside by the Court.

4.3 MODIFICATION OF TERMINATION OF EMPLOYMENT: ILO CONVENTION NO. 158 OF 1982

The common law position in termination of employment has always been ‘He who hires can fire with or without giving any reason”. This is supported by the principle of law that a willing employee cannot be forced on an unwilling employer. However, the International Labour Organization has been setting standards to regulate this common law position mostly in favour of the employee who is always at the receiving end. One of these standards is the ILO Recommendation No.119 of 1963 which prescribes that 407:

“Termination of employment should not take place unless there is a valid reason for such term, nation connected with the

403 See Morohunfola v. Kwara State College of Education of Technology (1990)4 NWLR (pt 566) 534
404 (1998) 11 NWLR (Pt 574)467
405 Fakunle v. Obafeimi Awolowo Teaching Hospital Management Board (1993)5 NWLR (Pt 291) 47
407 See ILO Recommendation N0.119 of 1963
capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or services.

In cases of redundancy, certain protections are given to workers who have spent more years on the job; this may not be unconnected with the fact that, age may not work in favour of a worker who is older competing with younger applicants for job. Thus, section 20 of the Nigerian Labour Act\textsuperscript{408}, provides that, in the event of redundancy, the employer shall inform the trade union or workers representatives concerned of the reasons for and the extent of the anticipated redundancy; the principle of last in, first out (LIFO) shall be adopted in the discharge of the particular categories of workers affected, subject to all factors of relative merit, including skill, ability and reliability\textsuperscript{409}.

Article 4 of the ILO Convention No.158 of 1982 reproduced the recommendation in the ILO Recommendation N0.119 of 1963. The Convention\textsuperscript{410} provides:

\begin{quote}
“The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirement of the undertaking, establishment or service”.
\end{quote}

This convention has changed the common law position of ‘he who hires can fire without adducing any reason’. Although Nigeria has not ratified this Convention; it is submitted, once the provision of the convention on termination of employment is brought or cited before the court\textsuperscript{411} under international best practices, the National Industrial Court of Nigeria will definitely apply the provision since the Court has exclusive jurisdiction over international best practices and unfair labour practices\textsuperscript{412}.

\textsuperscript{408} LFN, 2004  
\textsuperscript{409} Agomo V. Guinness (1995) 2 NWLR (Pt 380) 627 SC.  
\textsuperscript{410} See Article 4 of the ILO Convention No.158 of 1982  
\textsuperscript{411} National Industrial Court of Nigeria  
\textsuperscript{412} See section 254C (1)(f). See also, the Concept of Labour Rights in Nigeria, the work of this commissioner Author earlier cited in chapter three of this book.
The ILO C158 of 1982, though not ratified by South Africa, however, the South African Labour Appeal Court in *Modese & ors v. Steve’s Spar*\(^{413}\) by a majority decision apply the convention to the case. The court held:

> “The audi approach is in keeping with international standards. This cannot be said of the no audi approach. I say this because, quite clearly, the ILO convention on Termination of Employment No.158 of 1982 contains a general rule that an employer must not dismiss a worker for reasons based on conduct or work performance without having first given such worker an opportunity to defend himself against the allegations made against him. In this regard, the Convention does not say this does not apply to cases where workers are dismissed for striking. On the contrary, it should apply also to the dismissal of strikers because those would fall under dismissal for reasons based on the employee’s conduct. The Convention makes provision for one exception which is broad enough to refer to all the exceptions that normally apply to the audi rule. The convention or at least it is inconsistent with it”.

The decision in this case falls in line with Section 36 of the Nigeria Constitution which gives every worker/employee the right to be heard especially when the employer intends to fire under the right to exercise summary dismissal or when the worker was alleged to have participated in an illegal strike.

**SUMMARY**

This chapter discusses various ways of bringing the contract of employment to an end. Distinction is made between common law employment and those with statutory flavour; and the modification that was made to termination of common law employment particularly on the general rule that, he who hires can fire with or without adducing any reason. This is no longer a good law.

**REVIEW QUESTIONS**

1. Discuss in detail various ways of terminating a contract of employment.

\(^{413}\) Case No J.A. 29/99 decided on 15\(^{th}\) March, 2000 cited by J.E.O. Abugu op.cit. pg 39
2. The right to hire and fire without reason has been modified by ILO convention. Discuss using the South African decided cases.

3. Discuss the rule of natural justice as applicable to dismissal based on the conduct of the employee.

4. It is rare for court to reinstate an employee whose employment is wrongly terminated by a private sector employer. Discuss

5. Common law termination of employment differs in principles to that of termination of employment with statutory flavour. To what extent do you agree with this statement?

CHAPTER FIVE

HEALTH AND SAFETY AT WORK
Learning Objectives
At the end of this chapter readers/students should be able to explain, appreciate and apply the following concepts and statutes to industrial relations.

(i) The concept of safety at work
(ii) Common law duties of the employer.
(iii) The Factories Act, 1987
(iv) Employees’ Compensation Act, 2010
(v) Negligence and its defences
(vi) Vicarious liability

5.0 INTRODUCTION
The concept of ‘safety at work’ and ‘protection of health of employees’ is an indirect way of enforcing the fundamental right to life and dignity of human person\(^{414}\). Occupational health and safety have become an aspect of industrial law that has witnessed reforms and statutory innovations in Nigeria.\(^{415}\) At common law, an employer owes his/her employee a duty of care; breaching this duty would amount to negligence with consequential damages recoverable.\(^{416}\) The provision of a safe work environment, machines and system of work are mandatory obligations of employers generally. It is trite law that, where he appoints, agents, managers or supervisors to see to the smooth operation of its establishment, any injury or death occasioned to any employee will have a corresponding liability on the employer based on the doctrine of vicarious liability.

The House of Lords in *Wilsons and Clyde Coal Co. v. English* \(^{417}\) enumerated the common law duties of an employer which are: an employer at common law has a personal duty to provide a competent staff of workers. This is the duty to employ competent staff, provide a safe place of work, provide a safe system of work and effective supervision and provide adequate work tools, plant, equipment and

\(^{414}\) See sections 33 and 34 of the Constitution of the Federal Republic of Nigeria, 1999 as altered
\(^{415}\) The Factories Act, 1956 which was repealed by the Factories Act, 1987 offers protection to workers engaged in industrial productions, use of machines and flywheels; etc. In *Wilson and Clyde Coal Co v. English* (1938) AC 57 at 84 HL, The plaintiff respondent an employee of the defendant appellant coalmine was injured when the haulage system was negligently put into motion by a fellow employee. In a claim for damages by the respondent, the House of Lords held that the appellant/coalmine was liable for negligence.
\(^{416}\) See the case of *Donoghue v Stevenson*(1932) AC 562 HL
\(^{417}\) supra per Lord Wright
materials. The employer is duty bound to maintain the machines, equipment, plant and tools. These duties have been codified in the Factories Act, 1987. In the case of Koiki v NEPA, the plaintiff, a mechanical engineer was an employee of the defendant (NEPA). He was on duty at Ijora power station, Lagos when the scaffolding on which he was standing upon collapsed. He fell to the ground and sustained injuries. The Court found the defendant liable for negligence. The scaffold collapsed as a result of careless installation by fellow employees of the defendant from another department. Thus, there was a breach of the duty of care. The Court awarded damage for negligence.

5.1 COMMON LAW DUTY OF THE EMPLOYER
The doctrine of common employment has been abolished in Nigeria. Common employment was an impediment to compensation for employees who suffered injuries in the course of their employment. Thus, an employee who suffers injury at work may either obtain damages at common law or claim compensation under appropriate statutory framework.

Employer’s liability deals with the responsibility of an employer to compensate his employees for personal injuries sustained in the course of their employment. The liability may also arise through the negligent conduct of the employer’s workman in his course of employment, which leads to injury to another workman. Here, liability is said to be vicarious not personal.

5.2 DUTY OF CARE
An employer is under a common law duty of care to take reasonable care to ensure that workers are not exposed to risk of injury at his work. Thus, where an employee sustains an injury during the course of his employment as a result of the negligence of his employer to provide for safety at the work place, the employer shall be liable to pay damages to the injured employee. The statement of Lord Abinger in Priestly v. Fowler that, the master “is no doubt to provide for the safety of his servant in the course of employment to the best of

418 (1972) 11 CCH CJ, 127; see also Pullen v. Prison Commrs (1957) 2 All ER 470
419 See section 12 of the Labour Act.
420 Factories Act and Employees’ Compensation Act, 2010.
421 See Priestly v. Fowler (1837) 3 M & W1; Boson v. Sanford (1690) 19 ER 382
422 Supra
his judgment, information and belief”. This statement was recognition of the fact that an employer owed some duty to his employee for the employee’s safety.

In *Hutchinson v. York, Newcastle and Berwick Railway Co.*[^423^], it was held that “the master should have taken due care not to expose his servant to unreasonable risk”. The case of *Hutchinson v. York*[^424^] was decided on the basis of the doctrine of common employment. The facts were that an employee was traveling on duty in his employer’s train when the train collides with another train which also belonged to the employer. The employee suffered injury and later died. In an action instituted by his administrator, it was held that the employer was liable because the collision was caused by the negligence of a fellow employee. This is no longer the law in Nigeria.

The standard of care for determining whether or not an employer has discharged this duty of care is that of a reasonable person, not that of a super-human, unless the employer holds himself or herself out as possessing a special or knowledge in relation to the risk; in which case, he or she will be judged according to the higher standard[^425^].

A worker with a peculiar characteristic, for example, one eye will require a different, usually higher standard from a worker who has no such peculiarity.

An employer who is found wanting of taking reasonable steps for the safety of an employee will be rendered liable in damage to an employee who suffered injury as a result of his (employer) failure to take such reasonable care. Since the abolition of the ‘doctrine of common employment’, it is now possible to make an employer vicariously liable for the negligence of his employee which has caused injury to any employee. We shall discuss this under “Negligence as a tortuous liability” in labour law.

[^423^]: (1850)5 Exch. 343
[^424^]: (supra)
On the duty of the employer to provide competent fellow employees, and, instructing them in accordance with the circumstances for example, where a competent staff is in need of practical experience\(^{426}\).

Does the employer’s duty to provide equipment, tools, protective application or clothing etc extend to a further duty to urge or supervise an employee or employees in the use or to use what has been provided. Diverse opinions have been expressed. In *Qualcast Ltd v. Havynes\(^{427}\)*, the House of Lords said it is a question on the evidence in each case whether there is a duty to advise every experienced or inexperienced workman as to the use of equipment provided\(^{428}\). It appears it is neither here nor there. There are situations in which employer will not only provide but will also advise as to the use.

In *Mensa Sosu v. Technoexports Troy\(^{429}\)*, the plaintiff was engaged in drilling a hole in a metal, he sustained injury. In an action instituted, the court held that the employer should not only have provided goggles but should have ensured that they were used\(^{430}\).

### 5.3 STATUTORY DUTIES

The Factories Act, 1987 and the Employees Compensation Act, 2010 are statutory regimes for health and safety at work. Just like the the common law duty care, the statutes, are enacted to ensure the safety of workers, prevention of accidents, industrial diseases and provision of compensation for injured.

### 5.4 FACTORIES ACT

The Decree is divided into parts. Part I deals with Registration of Factories, Part II covers Health (General Provisions), Part III (the key part) deals with Safety (General Provisions), Part IV is concerned with the general provisions relating to welfare. Part V deals with special provisions and regulation relating to Health

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\(^{426}\) See *Hudson v. Ridge Manufacturing Co. Ltd* (1957) 2 All ER 229; on duty to provide safe machinery/equipment or plant and a safe system of work. See *Morton v. William Dixon Ltd* (1909) SC 807, 1809.

\(^{427}\) (1959)AC 743

\(^{428}\) See *Nolan v. Rental Manufacturing Co. Ltd* (1959)2 All ER 449.

\(^{429}\) (1977)11/CCHCH 2647,

\(^{430}\) See also *Odhigbo v. Saipen SPA* (1979) NCLR 328, where an employee who was a welder lost his left eye as a result of a bit of metal that went into his eyes. He was supplied with goggles, but never wore them.
Safety and Welfare. Part VI provides for notification and investigation of Accidents and Industrial Diseases. Part VII. IX, X and XI deal with Special applications, Administration Provisions, Offences Penalties and Legal Proceedings, and General matters respectively.

Section 87(1) define a factory as “any premises in which or within which, or within the close or cartilage or precincts of which, one person is, or more persons are, employed in any process for or incidental to any of...” Section 87 of the Act also classified a factory into three broad categories. The Act was enacted with this main aim: the provision of reasonable care for the safety of employees in the course of employment, and imposition of penalties for any breach of its provisions.

Section 1-6 of the Act provide for the Registration of Factories. Failure to register the factory’s premises with the Director of Factories is an offence with a fine not exceeding N2, 000 or imprisonment for 12 months or both.

Part II of the Act (i.e. section 7-13) deals with Health generally and provided for un-crowded, well ventilated, sufficiently lit, with adequate drainage of floors, and suitable sanitary convenience in a clean state. Section 9 provides for mandatory provision of ventilation. Section 13 of the Act empowers sanitary inspectors to carry out inspection of the factory for proper compliance with the Act. Thus by virtue of section 65, the inspector can enter; inspect by day or night even with police officers. They may request for the production of register of the factory.

Part III of the Act provides for safety from injury by dangerous parts of machinery. Sections 14-18 provide for fencing of flywheel and prime movers. Dangerous parts of machinery must be secured and fenced to prevent injury. Employees must also be protected from dangerous fumes, typologies, inflammable dust, gas, vapour and substance are to be safeguarded from injuring employee(s). The employee has a corresponding duty not to willfully interfere with or misuse any means, applicable, conveniences or other person employed in the factory premises. This is to exclude an employer from liability. In Groves v.

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431 Factories Act, LFN 2004
432 See paragraph (i) to (ix) of section 87.
433 Factories Act, LFN 2004
434 See sections 14-18 of the Factories Act, LFN 2004
435 See section 31-33
Wimboorne\textsuperscript{437}, English Court of Appeal held that an employer is under a statutory duty not only to fence dangerous machinery but also to maintain the fence in an efficient state. In this case, a boy employed to work on the machinery where fence had been removed suffered injury. The employer intended that the boy had no good cause of action in that the penalty of a fine provided for by the statute was intended to be the only sanction for breach of its provisions. The court rejected this argument. The doctrine of common employment is not a defence to an action here.

In Solomons v. Gertzen Ltd\textsuperscript{438}, Somervell LJ has said the courts clearly lean in favour of conferring on workmen a right to claim damages for breaches of statutory duty imposed on their employers or the occupiers of factories in which they work\textsuperscript{439}.

Section 40-44 of the Act deals with welfare (general provisions and regulations). This includes supply of drinking water which must be accessible to all employees; provision of a suitable place for keeping clothing not worn during working hours; readily available first aid boxes or cupboard.\textsuperscript{440}.

An injured factory employee who in his action for damages allege a breach of statutory duty and of the common law duty of care, may succeed in one although failing in another but where he succeeds in both he can only obtain one set of damages.\textsuperscript{441} Before an employee can institute an action on breach of health provision, its merit must be considered. In Carole v. North British Locomotive Co. Ltd, \textsuperscript{442} the workman complained that his employer had breached section 1(1) (b) of the Factories Act 1937, in that the employer had not cleaned the floor of his workroom for months as a result of which it was covered with several centimeters of foundering sand and dust and that his footwear and socks had become impregnated with the sand and dust resulting in his contracting dermatitis. The court rejected the contention that an action could not lie and awarded damages

\textsuperscript{436} See Odhigbo v. Saiden SPA (supra) where a welder refused to use his goggles
\textsuperscript{437}(1898)2 QB
\textsuperscript{438}(1954)1 All ER 625, 631
\textsuperscript{439} See Haigh v. Charles W. Ireland Ltd.
\textsuperscript{440}See section 40-44 of the Factories Act, LFN 2004.
\textsuperscript{441}See Western Nigeria Trading Co. Ltd v. Ajo (1965)2 All NLR 100.
\textsuperscript{442}(1957) SCT (CH CT) 2
because the employer had failed to clean the floor for months thereby breaching a statutory health provision.

5.5 **EMPLOYEES COMPENSATION ACT 2010**

The Employees’ Compensation Act, 2010, repealed the Workmen Compensation Act. Employees’ Compensation Act (ECA), 2010 is an improvement on the old Workmen Compensation Act (WCA) which has been criticized for its inadequacy of benefits, the non-enforceability of its insurance provisions and incomprehensiveness of the Act.

5.5.1 **The Objectives of the Act** as contained in section 1 of the Employees’ Compensation Act, are as follows:

(a) To provide an open and fair system of guaranteed and adequate compensation for all employees or their dependants from any death, injury, disease, or disability arising out of or in the course of employment;

(b) To provide rehabilitation to employees with work-related disabilities as provided in the Act;

(c) To establish and maintain a solvent compensation fund managed in the interest of employees and employers;

(d) To provide a fair and adequate assessment for employers;

(e) To provide an appeal procedure that is simple, fair and accessible with minimum delays;

(f) To expand the scope of injury to workers such as the inclusion of compensation of mental stress; and

(g) To combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

Section 2(1) of the ECA is applicable to all employers and employees in both the private and public sectors in Nigeria with the exception of members of the Armed Forces. Thus, ECA 2010 has comprehensive provisions that address the plight of an injured employee and by extension to his estate in the event of death, injury, illness or any disability arising out of and in the course of his/her employment. The Act provides further that in every case of an injury to an employee within the scope of the Act, the employee or in case of death, the dependant shall within 14 days of the occurrence or receipt of the information of the occurrence, inform the employer by given information of the disease or
injury to a manager, supervisor, first aid attendant, agent in charge of the work, where the injury occurred or other appropriate representative of the employer, and the information shall include; the name of the employee, the time and place of the occurrence; and in ordinary language, the nature and cause of the disease or injury if known\textsuperscript{443}.

The Act has nine (ix) parts: Part I\textsuperscript{444} deals with preliminary provisions which are the objectives of scope and application of the Act and exceptions to its application. Sections 4-6 contain the laid down procedures for making claims. It is a notification of the injury, and if death occurs or there is occupational disease, such must be reported. Thus, the injured employee must present a formal application under the Act. The Act shall not apply to any member of the Armed Forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity\textsuperscript{445}.

Part II has ten (10) sections (i.e. section 7-16) which cover injury, mental stress, occupational disease, hearing impairment, injury occurring outside the normal workplace. Section 13 of the Act makes compensation non-waiveable, and section 14 prohibits employees from making contributions towards compensation.

Part IV of the Act deals with ‘scale of compensation (i.e. section 17-30). Part V deals with power and function of the Board. Part VI (i.e. section 33-55) deals with employer’s assessment and contribution\textsuperscript{446}.

\textbf{5.5.2 Persons that can claim under the Act}

Section 73 of the Act defines an employee, to mean a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary apprenticeship or causal basis and includes domestic servants who are not members of the family of the employer, including any

\textsuperscript{443} See section 4(1) of the ECA, 2010
\textsuperscript{444} See section 1-3 which contain objectives of the Act, scope and applications and exemptions
\textsuperscript{445} See section 3 of ECA, 2010
\textsuperscript{446} There is compensation for death, injury or disease; section 12 provides for limitation of action. Compensation is mandatory as it cannot be waived; Employees are prohibited from making contribution to the compensation. Compensation cannot be attached or assigned. See sections 7-16
person employed in the Federal, State and Local Governments, and any of the
government agencies and in the formal and informal sectors of the economy.\textsuperscript{447}

The Act goes further by defining ‘dependant’ to include those members of the
family, including adoptive and foster family, of the deceased or disabled
employee who were wholly dependent upon his earnings at the time of his death,
or would, but for the disability due to the occupational accident or diseases, have
been so dependent. Thus, the combined effect of sections 73 (1) of this Act will
accommodate dependants of the employee to claim under the Act.\textsuperscript{448}

\textbf{5.5.3 Liability and Compensation for Industrial Injuries}
The First Schedule to Employees’ Compensation Act, 2010 contains the list of
occupational diseases as provided for under section 9 of the Act. Second
schedule to the Act contains injury and percentage of disability.\textsuperscript{449}

Section 72 (1) of the Act defines injury to include bodily injury or disease resulting
from an accident or exposure to critical agents and conditions in a workplace.
According to the Act, accident means an occurrence arising out of or in the course
of work which results in fatal or non-fatal occupational injury that may lead to
compensation under this Act. Thus, the First and Second Schedules to the Act
appear to be in conformity with International Labour Organization (ILO)
standards.\textsuperscript{450}

By virtue of the Third Alteration Act to the 1999 Constitution of the Federal
Republic of Nigeria, the court that has exclusive jurisdiction as regards
enforcement of the Act, is the National Industrial Court. Upon formal application
by the injured employee, compensation, which means any amount payable or
service provided under this Act in aspect of a disabled employee and it includes
rehabilitation, shall be paid in accordance with the Second Schedule to the Act.

\begin{flushright}
\textsuperscript{447} The Act comprehensively provides for scale of compensation for fatal cases; compensation
relating to warlike action; permanent total disability, permanent partial disability
disfigurement; temporary total disability and total partial disability.
\textsuperscript{448} See section 73(1) ECA, 2010
\textsuperscript{449} See section 9 of the ECA, 2010 and the 2\textsuperscript{nd} schedule to the Act.
\textsuperscript{450} See ILO Convention – an occupational Health and Statutory, No.155 of 1981; Protection
against Accidents (Dockers) Convention (Revised) No.32 of 1932 and Prevention of Accidents
(Seafarers) Convention No.134 of 1970. These convention have been ratified by Nigeria, as
such, they are applicable to occupational safety and industrial accidents.
\end{flushright}
5.6 ILO CONVENTIONS ON OCCUPATIONAL HEALTH AND SAFETY
Some of the conventions have been ratified by Nigeria and some are yet to be ratified. Those ratified are:

2. Protection against Accidents (Dockers) Convention (Revised) NO. 32 of 1932

The details of these conventions are in chapter ten.

5.7 NEGLIGENCE AND ITS DEFENCES
Negligence is a breach of a duty to take care which results to damage to another person. It is not every negligence or careless act which gives rise to a successful claim in tort. Negligence will only arise when there is a duty of care. In Blyth v. Birmingham Water Work Co., negligence was defined as the omission to do something which a reasonable man guided by those consideration, which ordinarily the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

Three basic elements must be proved in order to establish negligence. These are:

(i) That the defendant (employer) owed a duty of care to the plaintiff
(ii) That the defendant (employer) breached this duty and
(iii) That the plaintiff suffered damage as a result of the breach.

This principle of law is established in Donoghue v. Stevenson. In Priestly v. Fowler, Alderson B said that “this principle is that, a servant, when he engages to serve a master, undertakes as between him and his master, to run all the ordinary risks of the service and this includes the risk of negligence on the part of a fellow servant, whenever he is acting in discharge of this duty as servant of him who is the common master of both.

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451 This Convention has been summarized in chapter Ten of this book
452 Ibid.
453 Ibid.
455 (1956)11 EX. 781 at 784 Per Anderson J,
456 See also Odinaka v. Moghalu (1992)4 NWLR (Pt 233)1 at 15 SC.
457 (1932) AC 562 H.L.
458 (Supra)
Successful action based on negligence must be established in ‘causation’. For an employee to succeed in an action for damages for injury suffered, he must not only prove negligence i.e. breach of duty by the employer, but must also show that such negligence caused or materially contributed to his injury\(^{459}\).

5.8 **DEFENCES TO THE TORT OF NEGLIGENCE**
The common law defences available to an action based on negligence are:

(i) Common employment  
(ii) *Volenti non fit injuria/*consent  
(iii) Contributory negligence  
(iv) *Novus actus interveniens*

5.8.1 **Common Employment**
Common employment is no longer relevant under the Nigerian labour law. It is mentioned here just for an academic reason since the defence has been abolished in the former Western region in 1958, and former Eastern region in 1962. It was abolished in the Federal Territory Lagos in 1961. It was available in the states of Northern Nigeria until 1988 when it was abolished for the whole country.

5.8.2 **Volenti non fit injuria/*consent**
This defence rose on the basis that when an employee enters into a contract of employment, he thereby impliedly agrees to take the rights of the employment upon himself. In *Baddeley v. Earl Glanville*,\(^{460}\) the court held that the defence has no application to cases where injury arises from a breach of statutory duty on the part of the employee.\(^{461}\)

A plea of consent (i.e. entering into contract of employment implies consent to risks associated with the work) does not often succeed in employer and employee relationships, except the employer can show that the employee knew the risks, and voluntarily agreed that the risk should be on him. The burden of proof is not easy to discharge. Thus, when an employee is injured, a defendant employer may not be able to avoid paying compensation by claiming that the worker knew the

\(^{459}\) See *Bunnigton Castings Co. v. Wakdlaw* (1956) AC 613  
\(^{460}\) (1887) QBD 423.  
\(^{461}\) See *Eheeler v. New Martin Board Mills Ltd* (1933) KB 669
risk and went ahead to do the work. In *Bowater v. Borough of Rowley Regis*, the court held that for the defence to succeed, an employer must show that the employee undertook that the risk of the employment should be on him and that this is not shown merely by proof that the employee continued in his work with full knowledge of the risk involved. The defence will not apply where the worker had acted for the benefit of the employer. But it is available where the workman deliberately disobeys safety regulations which impose a direct duty on him.

5.8.3 Contributory Negligence
This is said to be the negligence of the employee which combined with the negligence of the employer to cause harm to the employee. The essence of contributory negligence is to the effect that the amount of compensation that will be given to the employee will be reduced according to the proportion of negligence for the injury. In *Caswell v. North*, contributory negligence was held to apply to a breach of statutory duty to fence machinery which leads to the injury of the plaintiff. The plea of contributory negligence alleges that the plaintiff was not injured thereby, but the plaintiff’s own willful act, in setting the machinery in motion. In *Evans v. Bakare*, the Supreme Court defined contributory negligence thus: “that the party charged is primarily liable but that the party charging him has contributed by his own negligence to what had eventually happened”. The law allows the court to apportion liability as between the parties. The standard is that of a reasonable employee and not that of the employer.

5.8.4 Novus actus interveniens
This is a defence that states that, after the defendant’s employer’s conduct, a new act, independent or external and not generated by the defendant intervened to cause injury to the plaintiff (employee) and thereby relieved the employer of liability. A *novus actus interveniens* is an act or conduct that comes between the initial act and result and alters and disconnects the initial act from the injury that

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462 (1944)1 KB AC 325
464 See *I.C.I v. Shatwell* (1965) A.C. 627
465 (1856)5 E & B 849
466 See *Butterfeild v. Forrester* (1809) 11 East 60
467 (1974)1 NMLR 78
468 See *Caswell v. Powell Duffiyn Associated Collieries Ltd* (1940)A.C. 152.
occurred and becomes the immediate, direct, or real cause of the harm that occurred; thereby relieving the initial wrongdoer or defendant from liability. The phrase means “a new act intervenes’.

Novus actus intervenens could arise as a result of the intervening act of a third party and the intervening act of the plaintiff (i.e. employee in this case).

5.8.5 Vicarious Liability
This tortuous doctrine arises when an employer is held liable by a third party who has suffered injury caused by the act of another -his employee in the course of his duties. Vicarious liability simply means holding somebody else for the misdeed of another person and the person held is someone who has control over the actual tortfeasor.

In Nduka v. Exenwaku, Fabiyi JCA defined vicarious liability as “as indirect legal responsibility, for example, the liability of an employer for the act of an employee, or a principle for the torts and contracts of an agent”.

The employer will only be liable if the act was committed “in the course of employment”. In ACB v. Agugo, it was held that an act is deemed to be committed in the course of employment if:

(i) It was a wrongful act authorized by the master.
(ii) The servant carried out an authorized instruction from the master in a wrongful ad unauthorized manner.

Vicarious liability does not extend to independent contractors carrying out work for the employer. In Quarkman v. Burnett, it was held that the one who employs another is not liable for his collateral negligence unless the relation of master and servant existed between them. In Salsbury v. Woodland:

471 (2001)6 NWLR (Pt 709) 474
472 (1995)6 NWLR (pt 599)
473 See Julius Berger (Nig) Ltd v. Ede (2003)8 NWLR (Pt 823)626
474 (1940)6 M & M 499; 151 ER 509
475 (1970)1 QB 324, Widgery L.J stated
“It is trite law that an employer who employs an independent contractor is not vicariously responsible for the negligence of that contractor...”.

The success of an action based on vicarious liability will be on first of all, establishing that master/servant relationship exists and that the liability of servant has been established so as to connect the master who is presumed to be of substance\textsuperscript{476}.

The essence of vicarious liability is to protect innocent third parties or fellow employee who might have been injured as a result of a negligence act of another employee. Thus, it is an answer to the rigidity created by the doctrine of common employment\textsuperscript{477}.

Claims for injury, death or occupational diseases can be brought under the Employees Compensation Act, 2010, and the Factories Act, 1987. This is referred to as statutory claims. However, same claims can be brought under the tort of Negligence. Claimant can only claim either under the statute or the common law and not both. It is sometimes safe to claim under the common law because of the limitation period clause in some statutes.

**SUMMARY**

This chapter treats the subject of health and safety at the workplace. It did an in depth discussion of the duties of the employer to keep his employees safe and healthy at common law and under the different statutes. The liability of the employer to a third party for the act of his employee, done in the course of his employment was also treated.

**REVIEW QUESTIONS**

1. Write notes on the following:

\textsuperscript{476}See IfeanyiChukwu (Osondu) Co Ltd. V. Boneh (Nig) Ltd (1993)3 NWLR (Pt 280) 246, 251-252.

\textsuperscript{477}See Duncan v. Findlater(1839)6 CL & F 894 for the justification of the doctrine of common employment.
a. Common law duty of an employer on safety and health of employees.
b. The duty of care as established by the case of Donoghue v. Stevenson.

2. Examine the protections available to a factory worker under the Factories Act, 1987.


4. Discuss the categories of persons that can claim under the Employees Compensation Act, 2010.

5. Write notes of the following:
   (a) Volenti non fit injuria
   (b) Contributory negligence
   (c) Novus actus interviens

6. Discuss the scope and extent of the doctrine of vicarious liability as applicable to labour relations.
CHAPTER SIX

COLLECTIVE LABOUR RELATIONS

Learning Objective
At the end of this chapter, readers/students should be able to define, explain, appreciate and apply the under-listed concepts to industrial relations:

(i) Meaning of Trade Union
(ii) Registration/legal status of Trade Unions
(iii) Membership of trade unions and freedom of association
(iv) Voluntarism
(v) Legal framework of Trade Union
(vi) Collective Bargaining
(vii) Casualisation and trade unionism in Nigeria

6.0 INTRODUCTION AND HISTORICAL OVERVIEW OF TRADE UNIONISM IN NIGERIA

Trade union movements in Nigeria started as a result of agitations for the social well-being of workers who were mere servants under the British Colonial masters. Although, it will be erroneous to say that no trade union had existed in Nigeria before the advent of colonization and the introduction of the formal employment relations.

Labour relations had existed in informal forms in Nigeria before colonization. Roper 478 has captioned the then situation thus:

“Generally the family farm is worked by the farmer and his wife or his wives and family. Communal duties and rights are woven into the agricultural system; an ancient system of obligatory communal labour still survives in many parts for subsidiary farming activities such as bush clearing, making forest paths or village roads. Chiefs still retain some customary powers under native law to regulate aspects of life and labour”.

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Judging from Roper’s submission, some forms of informal unions were noticed; these include family union and communal union. Outside these unions, artisans such as Blacksmiths, coppersmiths and market women had their informal associations where things that concerned their trades were usually discussed. The Association exercised oversight functions on errant members, members were sometimes sanctioned for unethical trade behaviour such as poor services or non-delivery of items already paid for.

During colonization, artisans employed in the public works department had their associations. Colonial masters did oppose their activities that accounted for the three days strike embarked upon by the artisans between August 9 and 12 of 1897. Thus, modern day unionism started in Nigeria in 1912 with the formation of the Nigerian Civil Service Union. It must be pointed out that government created the union and not the workers themselves.

Trade unions exist to regulate the terms and conditions of employment of workers. Once this function is absent, then, the association will not be considered as a trade union. This function was succinctly declared by Oguntade JCA (as he then was) in *Udoh & 2 ors v. Orthopedic Hospitals Management Board & Another* 479.

> “Primarily, the reason for the existence of a trade union is to regulate the terms and conditions of employment of workers. This is another way of saying that trade unions are to ensure that the terms and conditions given to workers by employers are suitable.”

Thus, trade union is primarily for the regulation of the terms and condition of employment of workers; it is not for political actualization of the workers’ self-centered objectives, as trade unions have been found in most cases, to have become more political in their agitations in Nigeria. Sometimes, they tilt towards the opposition parties to fight the government in power. This is unhealthy for economic development, social justice and socio-economic well-being of the workers.

479 (1993) 7 NWLR (Pt 254) 488
6.1 STATUTORY DEFINITION OF A TRADE UNION

Section 1(1) of the Trade Union Act, defines ‘a Trade Union’ as “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers whether the combination in question would or would not, apart from this fact, be an unlawful combination by reason of any of its purpose, do or do not include the provision of benefits for its members”.

Section 1(2) of the Trade Union Act goes further to state that the fact that a combination of workers or employers has purposes or powers other than the purpose of regulating the terms and conditions of employment of workers shall not prevent it from being registered under the Act. These sections alone cannot give a wholesome picture of what a trade union is.

Section 29(1) of the Act provides that a trade union can be described as an organization that either “consists wholly or mainly of workers or employers of one or more descriptions and whose principal purpose is the regulation of relations between workers and employers or employers association or consists of constituent or affiliated organizations or representatives of such constituent or affiliated organizations and whose established purpose is the regulation of relation between workers and employers or workers and employers’ associations.

It is clear from the above provisions, that, for an association to qualify as a trade union, the combination must be of workers or employers and it must have proper purpose of regulating the terms and conditions of employment of workers. Both workers and employers can form trade unions of separate capacities i.e. employees’ trade union or workers’ trade unions. However, both cannot combine to form a trade union.

The Act defines a worker as any employee, that is to say, any member of the public service of the federation or of a state or any individual (other than a member of any such public service) who has entered into or works under a contract with an employer whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing and whether it is

\(^{480}\) LFN, 2004
\(^{481}\) Trade Union Act, LFN, 2004
contract personally to execute any work or labour or a contract of apprenticeship\textsuperscript{482}.

6.2 LEGAL STATUS OF A TRADE UNION UPON REGISTRATION

The law requires that a trade union must be registered before it can be allowed to perform any act in furtherance of its purposes. The principal purpose is to regulate the terms and conditions of employment of workers. In \textit{Re Union of Ifelodun timber Dealers and Allied Workers}\textsuperscript{483}, A combination applied for registration as a trade union but was refused registration by the registrar. On appeal, De Lestang C.J. said there is nothing in the present case to show that the association has any rules as yet. Its objects are however, set out in its constitution and it is necessary to examine these objects as a whole in order to decide whether it is a trade union or not. He concluded by saying “I can see nothing in these objects which, to use the words of the definition, regulates the relation between workmen and masters or between workmen and workmen or between masters and masters”.

Section 3(1) of the Trade Union Act prescribed that an application for the registration of a trade union must be made to the Registrar of trade union in the prescribed form and signed by at least fifty members of the union in the case of union of employees and by at least only two members in the case of a union of employers. Section 3(2) of the Act provides that no trade union will be registered except with the approval of the Minister of Labour and Productivity; and that no trade union shall be registered to represent workers or employers in a place where there already exists a trade union. In \textit{Osawe v. Registrar of Trade Union},\textsuperscript{484} it was held by the Supreme Court that where the Registrar is satisfied that a registered trade union will adequately cater for the interest of applicants who desire to register a new trade union, the Registrar needs not proceed with the application for registration. Kazeem JSC said, this new provision make it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration.

\textsuperscript{482} See section 51 of the Trade Union Act, LFN 2004
\textsuperscript{483} (1964) 2 All NLR 63
\textsuperscript{484} (1985) 1 NWLR 755
Upon Registration, a trade union is conferred with the status of an incorporated body; it acquires all the attributes of an incorporated body. It can sue and be sued in its registered name, it can hold property in its name, and it continues in perpetuity no matter the changes in its membership.⁴⁸⁵

In *Bonsor v. Musicians Union*⁴⁸⁶ Lord Keith stated that a registered trade union is treated as an incorporated association and that members are liable to pay subscriptions and levies under the union rules, but they are not liable for the debts of their union, nor could their personal property be available for an unsatisfied judgment debtor.

However, ‘the ILO’s insistence on freedom of association is not to be taken as an endorsement for mushroom associations, or weak and powerless unions, that will not be able to protect the interests of their members through constructive engagement with employers in collective bargaining and, when necessary, industrial action’.⁴⁸⁷ The ILO recognizes that its labour standards in the form of conventions and recommendations are products of consensus and are expressly made subject to local conditions and circumstances. Such conditions and circumstances may limit right to freedom of association.

### 6.2.1 Cancellation of Registration

Section 7 of the Trade Union Act provides for six grounds under which the Registrar of Trade Union must cancel the registration of trade union. These six grounds must be proved to the satisfaction of the Registrar:

(a) that the registration of the trade union was obtained by fraud or as a result of a mistake; or
(b) that any of the purpose of the union is unlawful; or
(c) that, after receipt of a warning in writing from the Registrar, the union has deliberately contravened or continued to contravene any provision of the Act or the regulations; or

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⁴⁸⁵ E.E. Uvieghara op. cit
⁴⁸⁶ (1956) AC 104
(d) that the principal purpose for which the union is in practice being carried on is a purpose other than that of regulating the terms and conditions of employment of workers; or
(e) that the union though still in existence, has ceased to function; or
(f) that the union has ceased to exist.

The Registrar must send a notice in the prescribed form to the trade union at its registered office whenever the Registrar proposes to cancel the registration of any trade union.

6.3 MEMBERSHIP OF TRADE UNION.
Freedom of Association is a constitutional right guaranteed by the Constitution of the Federal Republic of Nigeria. Other international instruments such as the African Charter on Human and Peoples' Rights; Universal Declaration of Human Rights, 1948; ILO Conventions guarantee peoples’ right to associate with others, join or form political parties, trade union etc.

Section 12(a) of the Trade Union Act provides that “a person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union, by reason only that he is of a particular community, tribe, place of origin, religion or political opinion. Thus, an applicant to a particular trade union cannot be denied admission. Thus, the only qualification is that the age of such applicant must be 16 years old and above. Section 20 of the Act provides that a person under the age of sixteen shall not be capable of being a member of a trade union and a person under the age of 21 shall not be capable of being an official of a trade union.

Fundamental right to freedom of association is not absolute; this is demonstrated in the Trade Union Act which excludes certain categories of workers from forming or belonging to a trade union of their choice. Section 11 of the Act lists the excluded workers as members of the Nigeria Army, Navy or Air Force, the Nigerian Police Force, the Customs and Excise Department, the Immigration Department, the Prison Services and the Customs Preventive Service, the Nigerian Security Printing and Minting Company Ltd, the Central Bank of Nigeria, the Nigeria Telecommunication Ltd, and every Federal or State Government establishment, the employees of which are authorized to bear arms. The Minister
of Labour and Productivity is empowered to specify by order, any other such establishment from time to time.

Section 3(1) & (4) of the Act provides that any employee who is a projection of management is prohibited from union membership where, and only where, membership will lead to a conflict of his loyalties to either the union or his employer. For the purpose of determining projection of management, a person whose status, authority, powers, duties and accountability, as reflected in the conditions of service, are such as normally inherent in a person exercising executive authority may be recognized as a projection of management. Abugu\textsuperscript{488} opined that the rationale for excluding members of the Armed Forces and arms bearers from joining or forming trade unions is based on the fact that with guns in their hands, they could cause greater harm and danger to their employers.

Freedom of Association for trade union is guaranteed by the provision of section 12(4) of the Act\textsuperscript{489}. It provides that:

\begin{quote}
\textit{“Notwithstanding anything to the contrary in this Act; membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member”}\textsuperscript{490}
\end{quote}

\textbf{6.4 VOLUNTARISM}

The concept of voluntarism cannot be examined without recourse to the history of trade unionism in Nigeria. Trade union started in Nigeria in 1912 with the formation of the Nigerian Civil Service Union. Between 1912 and 1937, only three unions functioned in the movement; they were Nigerian Civil Service Union formerly known as Southern Nigeria Civil Service Union; the Railway Workers’ Union and the Nigerian Union of Teachers. The growth of Trade Unionism was as a result of the Trade Union Ordinance, 1938 which later metamorphosed into the

\textsuperscript{488}J.E.O. Abugu notes on Trade Union Law in Nigeria, 2010 Faculty of Law, University of Lagos.

\textsuperscript{489}TUA, LFN 2004

\textsuperscript{490}Section 12 of the Trade Union Act is in agreement with section 40 of the Nigeria Constitution, 1999 as altered, ILO Convention 87 and 98 of 1948 and 1949 respectively. See also section 2 of the Trade Union (Amendment) Act 2005.
Trade Union Act, 1973. The Ordinance guaranteed freedom of association and trade union’s right.\footnote{See Hoplains A.G. “The Lagos strike of 1897. An Exploration in Nigeria Labour History; past and present, 35, December, 1966 pp133-135. In 1897 artisan workman in public works departments embarked on a three day strike from 9\textsuperscript{th} of August to 12\textsuperscript{th} August, 1987 which was in protest against arbitrary working hours invoked by the colonial masters.}
The right to freedom of association is fundamental and constitutional; it is also guaranteed by international treaties and ILO conventions.\footnote{See Article 10 of the African Charter on Human and Peoples’ Rights, 1981; Conventions 87 and 98 of the International Labour Organization, 1948 and 1949 respectively.}

The concept of voluntarism is the pivot upon which collective bargaining operates as a tool of industrial negotiation. Voluntarism has its ideological foundation in a libertarian socio-political system based on the absence of coercion by any arbitrary state or collective body. It is a philosophy which holds that all forms of human associations should be voluntary. Voluntarism perfectly exists in pure capitalism or free market economies. The only function the state performs is to act as mediator between labour and employers. Voluntarism is based on good faith which allows trade unions and employers to negotiate and regulate their conditions of work without interference from the state or its agents.

The central principle of Voluntarism is free collective bargaining between trade unions and employer or body of employers.

Voluntarism in Nigeria is regulated by the Constitution of the Federal Republic of Nigeria, 1999 as altered; the Trade Union Act, 1976, Trade Union Amendment Act, 2005, the National Industrial Court Act, 2006; The Trade Dispute Act which provides for steps to be taken in settlement of industrial disputes and other procedural rules like the ADR Instrument, 2015 and at the International level, the ILO Conventions\footnote{ILO Convention 87 of 1948 and ILO Convention 98 of 1949.} 87 and 98 of 1948 and 1949 respectively.

Chapter IV of the Nigerian Constitution, 1999 does not provide for the right to collective bargaining expressly, however, the right to freedom of association\footnote{Section 40 of the CFRN 1999 as altered.} covers un-interfered collective bargaining. According to Uvieghara, the concept
of voluntary collective bargaining has long been accepted by all sides to the employment.\textsuperscript{495}

Voluntary collective bargaining has been recognized in government policy since 1948, through the Whitely Councils and the Joint Industrial Councils. This recognition accounted for why the government issued its official policy on collective bargaining. The government observed and declared:

\begin{quote}
“We have followed in Nigeria the voluntary principles which are so important an element in industrial relations in the United Kingdom...compulsory methods might occasionally produce a better economic or political result, but labour-management must, I think, find greater possibilities of mutual harmony where results have been voluntarily arrived at by free discussion between the two parties. We in Nigeria, at any rate, are pinning our faith on voluntary methods\textsuperscript{496}.
\end{quote}

The importance of voluntary collective bargaining cannot be over-emphasized. A writer has submitted:

\begin{quote}
“By bargaining collectively with management, organized labour seeks to give effect to its legitimate expectations that wages, and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual and that jobs should be reasonably secure\textsuperscript{497}”
\end{quote}

It has been noted that ‘properly conducted collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society\textsuperscript{498}. Voluntary collective bargaining is gaining more

\begin{flushright}
\textsuperscript{496}For details, see International Labour Office Ministerial Conference Record of Proceedings, 38\textsuperscript{th} session, Geneva, 1955 pg 33
\textsuperscript{498}See Donovan Commission ‘Royal Commission on Trade Unions and Employers’ Association, 3623 of 1968.
\end{flushright}
popularity in industrial relations as it aids and develop workplace democracy; redistribution of power and resources from employers to employees. It lessens the employers bargaining power over individual employees. Voluntary collective bargaining also aids the promotion of efficiency by limiting industrial conflicts in the workplace. Industrial conflict is inimical to efficiency of labour and productivity. Voluntary collective bargaining aids settlement of industrial disputes without the stress and the need to embark on industrial actions.

6.5 LEGAL FRAMEWORK OF TRADE UNION

Trade Union Act is the principal Act that regulates the activities of trade unions in Nigeria\(^499\). The Act has five parts: Part I (i.e. section 1 – 29) deals with registration of combinations as trade union, cancellation of registration, dissolution of trade union membership, exclusion of persons convicted of certain offences and disqualification from holding office in a trade union. Section 15 & 16 specifically provides that trade union dues are not to be applied for political purposes and certain proceedings. Section 17 of the Principal Act has been amended by section 4 of the 2005 Amendment Act.

Section 24 of Trade Union Act protects unionists and their unions from liability in torts which may arise as a result of industrial actions. Of importance is section 23, which prevents courts from entertaining any legal proceedings instituted for direct enforcement of any agreement mentioned in subsection 2 of this section or on recovering damages of any breach of any agreement maintained\(^500\).

6.5.1. Union Rules Book

The Act under its Part I provides in section 4 for the union rules. Every trade union shall have registered rules, which shall contain provisions with respect to the various matters mentioned in the First Schedule of the Act. It is trite that where the Registrar registers a union, he must, at the same time register its rules and members upon request, shall be sent a copy of the rules on payment of a sum not exceeding fifty kobo\(^501\). It is submitted that the provision ought not to have

\(^{499}\) The Trade Union Act Cap T14, LFN, 2004 as amended by the Trade Union (Amendment) Act, 2005.

\(^{500}\) See section 23(2) (a) – (e) of the Trade Union Act, LFN,2004

\(^{501}\) See section 22(1) of the Act.
mentioned a particular amount, or even so, such amount may be reviewed from time to time by the Minister of Labour and Productivity.

The rule book or constitution of a trade union is regarded by the courts as a contract document containing the terms of agreement between the members and union and defining the rights and obligations of parties. The status of the rule book was settled in the case of *Bonsor v. Musicians Union*[^502]. In *Nigeria Civil Service Union & Anor v. O.G. Essen & Anor*[^503], the Court of Appeal held that the constitution of a union is a contract document between the members of the union, and that the members have subsumed several rights into the letters of the constitution[^504].

### 6.5.2 Other Provisions of the Act

Part II of the Trade Union Act deals with Federation of Trade Unions. Section 30 provides for formation of Federation of Trade Unions and admission of further trade unions to membership of registered federation. Part III provides for Central Labour Organization, while part IV provides for accounts and returns of registered bodies. The Registrar has power under the Act to call for accounts at any time and investigate unsatisfactory accounts. He can go further to institute proceedings on behalf of registered body in certain circumstances. Part V of the Act has miscellaneous and general provisions on peaceful picketing, act not actionable in tort if in contemplation or furtherance of trade dispute. Trade Union Act, 1973 was amended via the Trade Union (Amendment) Act, 2005.

### 6.7 COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

Industrial conflicts are bound to occur. Thus, there must be put in place mechanisms to address or avoid frequent conflicts. Some of the processes through which industrial conflicts are resolved include collective bargaining. The end product of collective bargaining is collective agreement.

#### 6.6.1 Collective Bargaining

Collective bargaining involves negotiations and deliberations on the improvement of the working conditions of employees generally. International Labour

[^502]: supra
[^503]: (1985) 3 NWLR (pt 12) 306
[^504]: See *Alex Elufioye & Ors v. Ibrahim Haliru & Ors*
Organization (ILO) Collective Bargaining Convention No. 154 adopted in 1981 defines collective bargaining in its Article 2\textsuperscript{505}:

“The term collective bargaining extends to all negotiations between employers. A group of employers or one hand, and one or more workers’ organizations on the other, for (a) determining the working conditions or terms of employment and or (b) regulating relations between employer or their organizations and a workers’ organization or workers’ organizations.”

Improved conditions of employment, favourable terms and conditions of employment are the major targets of collective bargaining. According to Lord Donovan in Colli-more V. Attorney Geneva of Trinidad and Tobago\textsuperscript{506}:

“It is true that trade unions may have other purposes, powers and functions, but the main purpose for their existence is workers’ welfare based primarily on terms and conditions of employment\textsuperscript{507}.”

It is paramount to workers that there must be an equilibrium in the bargaining power of both the employees and the employers, notwithstanding what may be the contents of the individual contract of employment. The balance is achieved through the mechanisms and principles enshrined in collective bargaining\textsuperscript{508}.

Emiola\textsuperscript{509} stated that, ‘bargaining is the process of negotiating an agreement on the basis of ‘give and take’. Collective bargaining has been described as a means whereby terms and conditions of employment are settled by negotiation


\textsuperscript{506}(1970) AC. 538, 547

\textsuperscript{507}See also Udoh V Orthopedic Hospitals Management Board (1990) 4 NWLR (Pt 142) 53


\textsuperscript{509}Akintunde Emiola ‘Nigerian Labour Law (2008), Emiola Publishers Ltd.
producing an agreement between employers and workers’ organization.\footnote{See section 91(1) Labour Act.} Collective bargaining is collective dialogue, or Collective negotiation between the employers’ representatives and the workers’ representatives with a view to reaching a collective agreement on the issues under negotiation.

Negotiation itself is a dispute resolution mechanism under Alternative Dispute Resolution. Negotiation entails the parties discussing and agreeing to terms or reaching mutually acceptable resolution. This method involves discussions, concessions, compromises, communications, persuasion and bargaining. Thus bargaining could also mean negotiation. The Trade Dispute Act provides for a mechanism through which leaders of a trade union or representatives of workers can sit down with the management round a negotiation table and iron out their differences in an atmosphere of mutual trust, freedom of contract and understanding. Thus, collective bargaining entails voluntariness of parties. This principle recognizes the rights of the parties to negotiate the terms and conditions of their employment.

The Trade Union Act 1973\footnote{Now Trade Union Act, Cap T14, LFN, 2004} which was modified by the Trade Unions (Amendment Act 1978 and, later the Trade Union Amendment Act 2005 provides in its section 24(1)\footnote{Trade Union (Amendment) Act, 2005.}:

“For the purposes of collective bargaining all registered unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer."

Thus, statutory, collective bargaining has been recognized as a veritable tool for the management of industrial relations and industrial disputes.

In \textit{Union Bank of Nigeria v. Edet}\footnote{(1993) 4 NWLR 288; See also \textit{ACB v. Nsibike} (1995) 8 NWLR (PT 416) 725} ; \textit{ACB v. Nsibike}\footnote{(1995) 8 NWLR (Pt 416) 725}; it has been held that collective agreement made between one or more trade unions on the one side and one or more employers’ association on the other side, are not generally
intended to create legal relation except in the case of certain public boards or corporation. They are at best, a gentleman’s agreement, an extra-legal document totally devoid of sanction. However, it has been held in other cases that collective agreements regulate industrial and labour relations. In *Daodu v UBA*, it was held that if a collective agreement is incorporated or embodied in the terms and conditions of a contract of service whether expressly or by implication, they would be bound by it.

### 6.6.2 Processes of making Collective Agreements

Section 54 of the National Industrial Court Act (NICA) 2006 defines “collective agreement” as “any agreement in writing regarding working conditions and terms of employment concluded between an organization of employers or an organization representing employers, of the one part; and an organization of employees or an organization representing employees, of the other part’.

The end product of collective bargaining is collective agreements. When parties to collective bargaining meet and negotiate, a compromise is reached; this compromise which entails “give and take” for amicable resolution is what is termed collective agreement. The law provides that such an agreement must have copies and three of these copies must be deposited with the Minister of Labour and Productivity within 14 days of reaching the agreement. The Minister of Labour and Productivity has the power to make an order directing that the terms of the agreements or any part of it be binding on the employers and employees to whom the agreement relate.

Under the common law, a collective agreement is not regarded as contractually binding on the parties thereto. In *Ford Motors Co. Ltd v. Amalgamation Union of Engineering and Founding Workers*, it was held that collective agreement does not intend to create legal relations except in certain public boards or

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515 See *Cooperative & Commercial Bank (Nig) Ltd & Anor v. Keneth C Okonkwo* (2005) 3 NWLR (Pt 7) 109
516 *(2004) 29 WRN 53*
517 See also *Abalogu v. Shell* (1999) 8 NWLR (pt 613) 12
518 NICN Act, 2006
519 See Convention 98 of International Labour Organization on right to organize and collective bargaining
520 See section 2 Trade Union Act LFN 2004.
521 *(1969) 1 All E.R 494*
corporations. The legal implication of this is that collective agreements are biding in honour only and their enforcement must depend on industrial and political pressure.

The law on collective agreement has changed from what it used to be at common law. At common law, collective agreements are unenforceable. They are at best considered as gentleman’s agreements. However, in Afribank (Nig) Plc v. Kunle Osisanya, the court held that, collective agreement will be enforceable where they have been adopted as forming part of the terms of employment. Thus, once collective agreements are incorporated into individual’s contract of employment, they become binding and enforceable.

6.7 CASUALIZATION IN NIGERIA
Several factors could account for the new trends in the private sector of the Nigerian economy, in which employers of labour sometimes prefer casualization of workers and engaging some staff on a temporary basis known as ‘contract staff: This unhealthy situation is further worsened by economic recession. Workers on casual employment lack job security, social welfarism and social security. The Nigerian Labour Act specifies the period in which employees can work without a letter of appointment. It will amount to casualization if at the end of this period, no letter of appointment is given to the employee.

The Nigeria Labour Act, and the Employees Compensation Act, 2010 contemplate this situation when the two enactments define worker/employee to include those on temporary appointment. In order to qualify for compensation under the Employees’ Compensation Act, 2010, it is enough for the worker to be a casual worker.

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522 (2000) 1 NWLR (pr 642) 598
523 See section 7 of the Labour Act, LFN, 2004
524 Employees’ Compensation Act, 2010; section 72 (1) of the ECA, 2010: ‘employee’ means a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy.
The Nigerian Labour Act frowns at casualization of workers. It provide in its section 7(1)⁵²⁵:

“Not later than three months after the beginning of a worker’s period of employment with an employer, the employer shall give to the worker a written statement specifying:

(a) The name of the employer or group of employers where appropriate, of the undertaking by which the worker is employed.

The section further provides for the inclusion of the terms and conditions of the employment⁵²⁶. The Act excludes those who enter into a written contract of employment which covers each of the particulars mentioned under subsection 1 of the section.⁵²⁷ Vital to note is the fact that, even if the employment is for a fixed term, such must be stated in the letter of appointment⁵²⁸. Thus, casualization of workers is constructive slavery and an infringement on workers’ rights.

6.7.1 On whether or not Casual Workers can form or Join Trade Unions
Although, the Constitution⁵²⁹ guarantees freedom of association; however, it appears, an employee should be able to establish that he or she has a contract of employment with the employer; the terms and conditions in the contract, specified; who appointed him/her; how he/she was appointed; how he/she can be removed including the circumstances under which his/her appointment can be terminated⁵³⁰ before this right will become exercisable. However, using expansive approach to the interpretation of the Nigerian Constitution, 1999, a casual worker can join other casual workers to form a trade union probably to

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⁵²⁵ See section 7 of the Labour Act, LFN, 2004
⁵²⁶ Section 7(1) (g) of the Labour Act, LFN, 2004
⁵²⁷ See section 7(6)(a).
⁵²⁸ See section 7(1) (d) of the Labour Act, LFN, 2004.
⁵²⁹ CFRN 1999 as altered; see also ILO C87 of 1948 and ILO C98 of 1949. no fundamental right is absolute. There are derogations or exceptions to the provisions, however, such exceptions must be the ones provided for by the same Constitution. No statute has power to derogate the Constitution which is the organic law from where other laws derive their potency.
⁵³⁰ See Okhomina V Psychiatric Hospital Management Board (1997) 2 NWLR (Pt 485) 75
agitate for de-casualisation of their members. The concept of voluntariness presupposes that, once a registered trade union decides to admit a casual worker into its association, the membership of such casual worker may not be questioned. However, if there is any collective agreement reached between the employer or body of employers and the Union, it is doubtful whether that can apply to the casual worker since there is no valid contract of employment that exists between the employer and the casual worker. A casual worker can claim under the Employees’ Compensation Act whenever injury or death occurs in the course of the employment.

Section 54 of the Trade Union Act defines a member of a trade union to mean:

“A person normally engaged in a trade or industry which the trade union represents and a person either elected or appointed by a trade union to represent workers’ interest.”

What is paramount is the interest of the workers. Whether they are in formal engagements or on casual basis is immaterial. However, it appears that the hurdle to cross for such casual workers’ union is to get their trade union registered by the Registrar of trade union. Immediately the trade union is registered, it does not matter whether it represents casual workers or not. The aims and objectives of such a union must however be within the contemplation of the statutory definition of a trade union.

**SUMMARY**

This chapter describes trade union, the history of trade union in Nigeria, its status on registration and the legal framework of trade union. It also discussed the doctrine of voluntarism, the processes and legal effect of collective bargaining. Casualization of workers is equally examined.

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531 See section 40 of the CFRN, 1999 as altered. See also ILO C87 of 1948 and ILO C98 of 1949.
532 See section 72 of the Employees’ Compensation Act, 2010.
533 History of trade unions in the United Kingdom has shown that, the Peasant revolt of 1381 was carried out by peasants, serfs and casual workers. In fact, scholar like Carl Landan has observed that Labour Organizations too exist even in the middle ages but only in clandestine manner or under camouflage, and for so long could not operate openly. Trade unions operated in the Bible days as coppersmiths withstood the preaching of Apostle Paul in II Timothy 4:14.
534 See section 1 of the Trade Union Act, Cap T14 LFN, 2004.
REVIEW QUESTIONS

1a. What is a ‘trade union’?
b. Discuss the legal status of a trade union upon registration.

2. Identify and discuss the grounds and processes for the cancellation of registration of an already registered trade union.

3. Certain categories of workers are excluded from joining trade unions. Discuss.

4. Discuss the concept called ‘voluntarism’ under freedom of association for union members.

5. Discuss the following concepts
   i. Collective bargaining          ii. Collective agreement
   iii. Casualization of workers in Nigeria     iv. Trade Union rule book

6. In your opinion, do you think that casual workers should be allowed to join trade unions in Nigeria?
CHAPTER SEVEN

SETTLEMENT OF TRADE DISPUTES

Learning Objectives
At the end of this chapter readers/students should be able to explain, appreciate and apply the following concepts.

(i) The meaning of trade dispute
(ii) Trade disputes and industrial action
(iii) Strikes and lockouts
(iv) Trade union immunity
(v) Legal framework for settlement of trade dispute
(vi) The role of Minister of Employment, Labour and Productivity in Trade Dispute Settlement

7.0 INTRODUCTION

Human and social interactions may sometimes experience friction as a result of conflict of interests, divergent opinions, inequalities\(^{535}\) in socio-economic status, and other factors such as environmental, psychological, and emotional factors among many other factors. These frictions always, when not properly managed, lead to disputes. The world of work is no exception to disputes known as trade disputes. However, it is not all disputes that can be called trade disputes. The Trade Disputes Act defines what constitutes a trade dispute.

Employees, on one hand, are always interested in their social and economic well-being, as such they agitate for improved working conditions, reasonable work-hours, sustainable wages and salaries and so on. Employers on the other hand, are primarily concerned with the objective of profit maximization. This difference usually results in trade dispute. Thus, there is a need to maintain a balance between these interests. The Trade Dispute Act has set out steps to be taken for efficient settlement of trade disputes.

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\(^{535}\) Inequality is pronounced in employee/employer’s relationship when it comes to bargaining. The employers always have the upper hand. He decides the terms and conditions of the employment. Employee is at the receiving end because he is incapacitated at his entrance into the relationship.
The statutory steps for settlement of trade disputes appear to be a mere academic exercise as labour unions frequently resort to strikes instead of following the laid down procedures.

7.1 THE MEANING OF TRADE DISPUTE
Trade dispute means any dispute between employers and workers or between workers and workers, which is connected with employment or non-employment or term of employment or conditions of work of a person. There are three basic elements in this definition, which are, the subject matter of trade dispute; the parties to the dispute and third, the purpose of the dispute. Thus, the subject matter may involve the “employment or non-employment” or “the terms of employment” or “the conditions of work” of any persons. The phrase “terms of employment” as used, will usually cover express and implied terms in a contract concerning wages, hours of work, holidays with pay, sickness benefits, grading and promotion, and mode of dismissal. Trade dispute may also include dispute over an agreement of workers to join a particular trade union or the interpretation of a collective agreement.

The phrase ‘conditions of work’ include “safety and physical comfort” at the place of work i.e. physical condition under which a workman works. It must be noted also, that, section 1(a) of the Trade Disputes (Amendment) Act 1992 has expanded the jurisdiction of National Industrial Court (NIC) by the addition of inter-union and intra-union disputes to trade as contained in section 47(1) of the Trade Disputes Act. Thus, any dispute which falls out of the scope of the above definition of the Trade Disputes will not be considered as Trade Disputes.

7.1.1 LEGAL FRAMEWORK FOR TRADE DISPUTES
The current legal framework for the settlement of the trade dispute is contained in the Trade Disputes Act, 1976 as amended, the Trade Disputes Act Trade Disputes (Essential Services) Act 1976, and the National Industrial Court Act, 2006.

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536 See section 51 of the Trade Dispute Act 1973
539 Emiola op. cit
The legal framework established by the Trade Disputes Act recognizes the principle of free collective bargaining and voluntary settlement of trade disputes.\textsuperscript{540}

7.2 TRADE DISPUTES AND INDUSTRIAL ACTIONS

Industrial disputes arise as a result of unresolved differences between employers and employees. Since 1941, there has always been a provision for intervention of a third party to assist the parties to reach a compromise. The government has always been the only party so empowered \textit{ab initio}. Thus, the government could appoint a conciliator only at the instance of either the employer or employee or arbitration tribunal at the invitation of the parties to a dispute. This system of trade dispute resolution changed in 1968 under the guided intervention policy. Thus, the parties to a trade dispute must first attempt to settle it by means agreed between them for the settlement of the dispute.

7.2.1 Strikes

Strike is the withdrawal of labour by employees as a means of pressing home their demands. It is a collective action of the employees. Many writers have argued that it is an integral part of collective agreement and that both are inseparable.

Strike is defined in Sections 1 and 3 of the Trade Disputes Act as, “the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work”.\textsuperscript{541}

The actions that constitute strike are “cessation of work” and “concerted refusal” to continue to work. Strike includes the so called work-to-rule, ban on overtime, or go-slow. Cessation of work has been defined to include deliberately working at

\textsuperscript{540} See section 48, Trade Dispute Act, LFN, 2004. See detailed discussion on strike in chapter three
less than usual speed or with less than usual efficiency and refusal to continue to work at usual speed or usual efficiency.

Under section 18(1) of the Trade Dispute Act, an employer must not declare or take part in a lock-out and an employee must not take part in a strike in a connection with any trade dispute where (a) the procedure specified in section 4 or 6 of the Act has not been complied with in relation to the dispute; or (b) a conciliator has been appointed under section 8 of the Act for the purpose of effecting a settlement of the dispute; or (c) the dispute has been referred for settlement to Industrial Arbitration Panel under section 9 of the Act or (d) an award by an Arbitration tribunal had become binding under section 13(3) of the Act; or (e) the dispute has been referred to the National Industrial Court under section 14(1) or 17 or of the Act; or (f) the NIC has issued an award on the reference.

It is a criminal offence for anybody to take part in a lock-out, or in a strike action in connection with any trade dispute, without first exhausting the procedures listed above.\textsuperscript{542}

A literal construction of section 18 shows that there is a right to strike, but it is severely limited, thus leading to the opinion that there can never be a lawful exercise of any right to strike in Nigeria as long as section 18 remains law.\textsuperscript{543} Although the ILO Committee of Freedom of Association has passed adverse comment on these provisions including the criminalization of strike, they still remain the law until abrogated or expansively interpreted by the court.

\textbf{7.2.2 Lockouts}

A lockout is defined in section 47(1) of the Trade Dispute Act as the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work\textsuperscript{544}. Where an employer locks out his

\begin{footnotes}
\item\textsuperscript{542} See section 18(2) of the Trade Dispute Act, LFN, 2004
\item\textsuperscript{543} Agomo C.K ‘Nigerian Employment and Labour Relations Law and Practice (2011) Concept Publications Press
\item\textsuperscript{544} See section 18(2) of the Trade Dispute Act, LFN, 2004
\end{footnotes}
employees, the employees are entitled to wages and any other accruable remuneration for the period of the lockout and this period must not prejudicially affect any rights of the employees, being rights dependent on the continuity of period of employment. This is contained in section 43(2) of the Trade Dispute Act. Questions which arise as a result of lock-out must be referred to the Minister of Labour and Productivity upon the application of the employees or their representatives. It must be noted that, the decision of the Minister is final.

7.3 TRADE UNION IMMUNITY

As earlier pointed out under chapter three of this manual, Trade Unions are protected from tortuous liability.

Section 23 Trade Union Act provides:

(1) *Any action against a trade union (whether of workers of employers) in respect of any tortuous act alleged to have been committed by or on behalf of trade union in contemplation of or in furtherance of a trade dispute shall not be entertained by any court in Nigeria.*

(2) *Subsection (1) above applies both to an action against a trade union in its registered name and to an action against one or more persons as representatives of a trade union.*

This provision protects only the union and not the officials or member of the union who committed the tort.

Also, the defence under section 23 will only avail a trade union if such a tort is committed when the union action was in contemplation of furtherance of trade dispute. This phrase “in contemplation of furtherance of a trade dispute” has been described as the “golden formula”. Thus, the dispute must qualify as ‘trade dispute’ before the phrase will apply, the dispute must be connected with one or more of the following subject matter; the employment or non-employment,

545 Chapter three covers the concept of labour rights. Trade Union Immunity is also discussed in that chapter.
546 See *Bussy v. Amalgamated Society of Railway Servants & Bell* (1908) 24 TLR 437; *Vatcher & Sons Ltd v. London Society of Compositor* (1913)AC 107; *Adebola v. Babayemi* (Unreported) Suit No. JD/12/63
terms of employment or conditions of work of a person. In *NWL Ltd v. Woods*\(^{547}\), it was held by the House of Lords that trade dispute must be connected with one or more of the permitted subjects.\(^{548}\)

### 7.4 THE LEGAL FRAMEWORK FOR SETTLEMENT OF TRADE DISPUTES

The Trade Dispute Act and the Trade Dispute (Essential Services) Act are the principal enactments regulating settlement of industrial disputes. The National Industrial Court Act, 2006 confers exclusive jurisdiction on the NIC as the court that has jurisdiction over industrial disputes. The Third Alteration Act to the Constitution of the Federal Republic of Nigeria has conferred more jurisdictions on the court and made it a superior court of record.

### 7.5 STATUTORY PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES

Section 3 of the Trade Dispute Act enjoins the parties to a trade dispute to first attempt to settle it by any existing, agreed means of the settlement of disputes. Upon the failure of the attempt or if there is no such agreed means of settlement, the parties must within seven days of the failure or within seven days of the date on which the dispute arose or was first apprehended where no means of settlement exists, meet together by themselves or their representatives under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties with a view to the amicable settlement of the dispute. If within seven days of appointing the mediator the dispute is not settled, it must then be reported to the Minister of Labour and Productivity or his Permanent Secretary by or on behalf of either of the parties within three days of the end of those seven days.\(^{549}\)

Section 5(2) of the Act provides that a report must be in writing and must record the points on which the parties to “a dispute disagree and describe the steps already taken by them to reach a settlement. Upon the dissatisfaction of the Minister of Labour and Productivity or his Permanent Secretary that all the above requirements for internal settlement have been substantially complied with, he must issue to the parties a notice in writing specifying the steps which must be taken to satisfy those requirements and may specify in the notice, or if no period

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\(^{547}\) (1979)1 WLR 1294

\(^{548}\) See further discussion in chapter three of this manual.

\(^{549}\) See section 4(2) of the Act, Trade Disputes Act, LFN, 2004
is specified after the expiration of fourteen (14) days following the date the notice is issued, the dispute remains unsettled. If the Minister is satisfied that those steps specified in the notice have not been taken or that either party is, for its part, refusing to take those steps or any of them, he may proceed to exercise such of his powers under sections 8, 9, 17 or 33 of the Act. Thus, any of such powers that seem appropriate shall be applied by him.

Under sections 8, 9, 17 or 33 of the Trade Dispute Act, the Minister is empowered to appoint a conciliator, refer the dispute to Industrial Arbitration Panel (IAP), refer certain types of disputes to the National Industrial Court or appoint a Board of Inquiry.

Section 4 of the Act empowers the Minister to apprehend a trade dispute, where he does so, he may in writing inform the parties or other representatives of his apprehension and of steps he proposes to take for the purpose of resolving the dispute which may include appointment of a conciliator under section 7 of the Act.

Thus an award by IAP is binding and contravening such an award is an offence.550 However, if there is an objection to IAP award, such dispute may be referred to NIC551.

7.6 INDUSTRIAL ARBITRATION PANEL (IAP)
As earlier pointed out under in this chapter, Industrial Arbitration Panel and National Industrial Court are the institutions saddled with the responsibility of settling trade disputes. Appeals from IAP go to NIC and the decisions of NIC are final. Appeals from NIC go to the Court of Appeal on matters that bother on Fundamental Rights only.552 The only court that exercises exclusive jurisdiction and power over employment/labour matters is NIC to the exclusion of all other courts.553

550 See section 12(5) of the Act, where a dispute is referred to the NIC directly especially were the dispute is one of which employees in any essential service are a party, such referral will be appropriate.
553 See chapter eight of this manual
7.7 THE ROLE OF THE MINISTER OF LABOUR AND PRODUCTIVITY IN TRADE DISPUTE SETTLEMENT

The Trade Dispute Act empowers the Minister to carry out certain functions under the Act. Thus, matters must be reported to the Minister for appointment of conciliator and referrals to IAP and NIC. The Minister is also empowered to exercise his power under appropriate circumstances as specified under sections 7, 8, 16 or 32 of the Act.\textsuperscript{554} The Minister under section 4 of the Act can also apprehend a trade dispute.

7.8 GLOBALIZATION AND CORPORATE GOVERNANCE

There is a complex interface between globalization and the promotion of core labour standards. \textsuperscript{555} Thus, universality of core labour standards cannot be over-emphasized. Nigeria cannot operate in isolation. We must take into consideration International Labour Standards which provide the blue print or the benchmark on which individual countries are to build up rules that will enable the social partners engage in workplace activities, to work out the social ground rules that will enable each party to contribute positively to the governance of the workplace.

It has been stated that, the four core labour principles of the ILO are:

(a) Freedom of Association and the effective recognition of the right to collective bargaining.\textsuperscript{556}
(b) Elimination of all forms of forced or compulsory labour.\textsuperscript{557}
(c) Effective abolition of child labour.\textsuperscript{558}
(d) Elimination of discrimination in respect of employment and occupation\textsuperscript{559}.

Thus, for these core labour principles to be in operation at optimal level in Nigeria, our industrial and labour environment must be conducive for social

\textsuperscript{554} Trade Disputes Act, LFN, 2004
\textsuperscript{555} Agomo C.K op.cit
\textsuperscript{556} See ILO Conventions 87 and 98 of 1948 and 1949 respectively
\textsuperscript{557} See ILO Convention 105 of 1957;
\textsuperscript{558} See ILO Convention 182 of 1999
\textsuperscript{559} See ILO Convention 111 of 1968
interactions which include social dialogue in workplace, so as to promote economic performance, best labour standards and social progress.

**SUMMARY**
This chapter discussed the legal framework for the resolution or settlement of trade disputes. The meaning and tools of industrial action were discussed. The immunity of trade unions and the distinction between immunity for trade and its officials was explained in this chapter.

**REVIEW QUESTIONS**

1a. What is a trade dispute?
   b. Identify the legal framework for regulation and settlement of trade disputes.

2. Write notes on the following:
   (a) Strikes
   (b) Lockouts

3. Discuss whether or not trade unions have immunity to tortuous liability during industrial actions.

4. Discuss the steps for settlement of trade dispute under the Trade Dispute Act.

5. Discuss whether or not Trade Unions have immunity against criminal liability during industrial action.
CHAPTER EIGHT

NATIONAL INDUSTRIAL COURT OF NIGERIA

Objective
At the end of this Chapter, Students/readers should be able to explain, appreciate and apply the following concepts.

(i) Historical Background of the NIC
(ii) The NIC and the NIC Act, 2006
(iii) Judgments of NIC Pre and Post 2006 NIC Act
(v) Powers of the NIC under the Third Alteration Act
(vi) Composition of the Court
(vii) Jurisdiction of the NIC under the Third Alteration Act, 2010
(viii) The NIC and Ratified International Treaties
(ix) NIC Criminal Jurisdiction
(x) Appeals on the decisions of the NIC

8.0. INTRODUCTION
The National Industrial Court of Nigeria is a specialized Court which is established for labour and employment related matters. The importance of labour court cannot be over-emphasized, as labour matters are crucial and central to any meaningful macro-economic development. Both developing and developed economies cannot afford not having a vibrant and legally constituted labour court. The Nigerian Government had attempted to provide an efficient legal framework for the settlement of trade disputes since 1941 with the promulgation of the Trade Disputes (Arbitration and inquiry) Lagos Ordinance of 1941. This

560 the International Institute for Labour Studies Geneva, in one of its meetings (the fourth) held in 1986 emphasized the importance of Labour Court systems for industrial relations as well as the interest of the ILO and the IILS (international institute of labour studies) in such systems. See Labour Courts in Europe, Proceedings of a Meeting organised by the International Institute for Labour Studies, Geneva.

561 By developing, these are economies that are labour intensive in its production capacity like Nigeria, while developed economies referred to industrialized ones where machines are replacing human labour. The latter is capital intensive see M.L Jhingan, (2001) Advanced Economics theory, (Vrinda Publications) page 1089

562 Under the 1941 ordinance, only ad hoc bodies in the form of arbitration tribunals could set up to handle trade disputes and the role of government were merely discretionary at the
trend continued with the Promulgation of the Trade Disputes (Emergency Provision) Decree No. 21 of 1968 and the Trade Disputes (Emergency Provision) (Amendment No.2) Decree 53 of 1969.\(^{563}\) The 1969 Decree established on a permanent basis, a tribunal to be known as the Industrial Arbitration Tribunal. The problem with the 1969 Decree which paved way for Decree 7 of 1976 later known as Trade Dispute Act of 1976 has to be addressed.\(^{564}\) Ever since 1976, the National Industrial Court of Nigeria has witnessed structural, statutory and constitutional changes.

### 8.1 HISTORICAL BACKGROUND OF THE NIC

The Trade Disputes Act of 1976 introduced new legal dynamics to the settlement of Trade Disputes in Nigeria. The National Industrial Court of Nigeria is a product of the Act.\(^{565}\) The Court under the 1976 Act has limited scope and jurisdiction, it was concerned with settlement of trade disputes, interpretation of collective agreements and matters connected thereto.\(^{566}\) Historically, prior to 1968, industrial law and practice in Nigeria was modeled on the non-interventionist and voluntary model of the British approach.\(^{567}\) According to Kanyip\(^ {568}\) “by the 1970s and particularly after the Nigerian Civil War, this approach was abandoned for an interventionist model. It is thus, right to submit that the NIC of Nigeria is an instance of the invitation of the parties. The Ordinance was only applicable to Lagos until 1957 when the Trade Disputes (Arbitration and Inquiry) Federal Application) Ordinance of 1957 was passed.

\(^{563}\) The 1969 Decree banned strikes and lock-outs under pain of imprisonment without option of fine and imposed stringent duties on the employers and employees to report strikes and lock-outs within 14 hours to the Inspector-General of Police.

\(^{564}\) The National Industrial Court was established by the Trade Dispute Act 1976.

\(^{565}\) Section 19 of the Trade Disputes Act provides “There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as “the court” which shall have such jurisdiction and powers as conferred on it by this or by other Act with respect to the settlement of trade Disputes, the interpretation of collective agreement and matters connected therewith”.

\(^{566}\) Although the Act gave exclusive jurisdiction to the Court on the matters listed under the 1976 Act, however, the court was not listed or mentioned as a superior court of record.

\(^{567}\) The British approach is that which encourages free market economy where forces of demand and supply are allowed to determine price and other variables. It was a general belief that government has no business in doing business. However, scholars have objected to this approach since regulatory roles of government cannot be undermined see M.L Jhingan (op. cit) Brian Alkinson et-al op.cit page 237.

\(^{568}\) Hon. Justice Benedict B. Kanyip (Ph.D) The National Industrial Court; Yesterday, Today and Tomorrow; available on www.google.com;
product of the interventionist approach”. Kanyip further submitted that “the NIC was generally, structured in a regimented and compartmentalized labour disputes resolution regime but with circumscribed ministerial discretion”.

The NIC under the 1976 Act was faced with two different eras; the first being that, the court was established indirectly under the 1963 constitution;... there was no problem relating to the status of the court because the 1963 constitution was amended to give constitutional backing to the court’. The second being that, 1979 Constitution did not list the court as a superior court of record. That singular omission led to many controversies. However, section 6(5) (g) of the 1979 constitution only mentioned “such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make law”

In a bid to remedy an expensive omission in the 1979 Constitution, Decree 47 of 1992 specifically made the NIC a superior court of record. The 1999 Constitution threw the Court back to its non-superior court-of-record status as section 6(5) of the Constitution did not list the court as a superior court of record. The passage of NIC Act 2006 could not remove the court from the non-superior court of record status notwithstanding section 1(3) of the Act.

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569 The jurisdiction of the court could only be invoked upon a referred from the Minister of Labour. This is no more the case. The jurisdiction of the Court has been enlarged for instance, by sections 13-19 of the NIC Act, 2006.

570 See Agomo C.K (2011) Nigerian Employment and Labour Relations Law & practice (Concept Publication Limited) page 320

571 Ibid

572 See section 6 of the 1979 Constitution of the Federal Republic of Nigeria

573 See Maritime Workers’ Union of Nigeria V NLC (2005) 4 NLLR (pt 10) 270 at 282; see also section 5(2) of Decree 47 of 1992

574 Section 1(3) of NIC Act provides that the Court shall be a superior Court of record and shall have all the powers of a High Court; it is well-settled that statutory provisions are inferior or rank below constitutional provisions, the fact that, the court was not listed as a superior court of record under the 1999 constitution before the third alteration Act, 2010 brought more controversies to many of its judgments; see section 1(3) of the Act.
8.2 THE NIC AND THE NIC ACT 2006

The NIC Act came into being in 2006. It conferred on the court the status of a superior court of record. However, it was noted that section 6(3) of the constitution specifically referred to courts listed under section 6(5) of the same constitution as the superior courts of records.

The NIC Act of 2006 repealed Part II of the Trade Dispute Act. The NIC Act 2006 is superior to the Trade Dispute Act. The Act addresses four major classifications—composition of the court and appointment of judges. Status of the court was statutorily upgraded to a superior court of record and that the court shall have all the powers of a High Court. The jurisdiction of the court was enlarged with power being given to the National Assembly to confer more jurisdictions on the court. It is vital to point out that the National Assembly may also by an Act prescribe that any matter under sub-section (1)(a) of section 7 may go through conciliation or arbitration before such is heard by the court. The

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575 On the 31st day of May, 2006, the National Assembly passed the National Industrial Act, 2006. The Act was assented to by the then president, Chief Olusegun Obasanjo on the 14th day of June, 2006. The Act established the NIC as a superior court of record and conferred exclusive jurisdiction on the court with respect to labour and industrial relations matters.

576 Section 1(3) of the Act has no legal power to amend section 6(5)(a)(1) of the 1999 constitution; thus, notwithstanding the provision of the Act, there were diverse commentaries and adverse judicial sentiments. See the decision in NUEE V BPE.

577 Constitution of the Federal Republic of Nigeria, 1999 before amendments’

578 Ibid.

579 See the conflicting ratios of the four courts of Appeal cases of Kalango V Dokubo (2003) 15 WRN 32; A.G Oyo State V NLC Oyo State Chapter (2003) 8 NWLR 1; Bureau Of Public Enterprises (BPE) V National Union Of Electricity Employees (NUEE) [2003]13 NWLR (pt 837) 382

580 See section 53(1) & (2) of the NIC Act 2006

581 Section 1 of the NIC Act 2006, established the court, subsection 2 of the section provides that the court shall consists of the president and other judges not less than twelve (12) Judges; sub section 4 of section 2 makes it mandatory for legal practitioners only to be appointed as judges; unlike what was the practice under 1976 Act and the 1992 Decree which allowed non-lawyers to be judges of the Court.

582 See section 1(3) of the Act

583 See section 1(3)(b) of the Act

584 See section 7(1)(9)&(b); the jurisdiction of the court covers labour including trade union and industrial relations; environment and conditions of work, health, safety and welfare of labour and matters incidental thereto; other matters include strike, lock-out, interpretation of collective agreement

585 The matters here are matters under part 1 of the Trade Dispute Act.
NIC Act recognizes the need to operate within and in the spirit of international labour standards.\(^{586}\) In addition, the court is empowered to make an order of mandamus, requiring a thing to be done, an order of prohibition prohibiting any proceedings cause or matter or an order of certiorari removing any proceeding, cause or matter into the court for any purpose.\(^{587}\)

### 8.3 JUDGMENTS OF NIC PRE AND POST 2006 NIC ACT

Decree 47 of 1992 made NIC a superior court of Record; however, the constitutional and fundamental status problem the court was faced with had not been removed. The Court had suffered many set-backs among which were the NIC was the only court of law in the country where litigants would not on their own volition, except when activating the interpretation jurisdiction of the court, approach the court to ventilate their grievances unless referred to the court by the Minister of Labour.\(^{588}\) The requirement of referral in other than interpretation disputes worked in a manner that precluded the court from hearing matters directly even when cases were transferred to the NIC from the other courts.\(^{589}\) Some of the cases transferred to the NIC from other courts include *Incorporated Trustees of Independent Petroleum Marketers Association v Alhaji Alli Abdulrahaman Himma & 2 ors.*\(^{590}\)

Prior to the passage of the NIC Act, 2006, some Court of Appeal decisions created much controversies and questions as to the constitutionality of the NIC.\(^{591}\) For

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\(^{586}\) See section 7(6) of the NIC Act, 2006

\(^{587}\) See section 16-18 of the Act; compared these express provisions to the decision in *Kalango V Dokubo* (supra) where the court of Appeal held that the NIC cannot grant declaratory and injunction orders. The court was relying on the orbiter dictum of His Lordship Oputa J.S.C in *Western Steel Works V Iron & Steel Workers Union* [1987] 1 N.W.L.R (pt 49) 284.

\(^{588}\) See Hon. Justice Kanyip op.cit

\(^{589}\) ‘Other courts’ means High court of a state, Federal High Court or High Court of the Federal capital Territory.

\(^{590}\) Unreported Suit NO. FHC/ABJ/CS/313/2004, the ruling of which was delivered on January 23, 2004

\(^{591}\) The case of *Ekong and Oside* (2004) All FWLR 562 threw up difficult questions as to the constitutional status of the NIC, however, it was held that, it is difficult to read unconstitutionality in the statutes that created the NIC; SEE B.B Kanyip, The National Industrial Court: Jurisdiction, Powers and Challenges in Rocheba’s Labour Law Manual edited by Enobong Etteh, Vol. 1 (2007) published by Rocheba Law Publishers
instance in *Kalango v Dokubo*, the Court of Appeal came to a conclusion, that
the subject of the dispute in this the case was an intra-union dispute and not a
trade-dispute; thus, outside the jurisdiction of the NIC. More disturbing is the
decision of the Court of Appeal in *Attorney General of Oyo State v NLC* in
which, the plaintiff sought an injunctive and declaratory reliefs to restrain the
defendants from going on strike without first exhausting the laid down procedure
under Part 1 of the Trade Dispute Act. It also filed a motion ex-parte and a
motion on notice asking for others against the defendants to maintain the status
quo pending the determination of the substantive suit. Oyo State High Court
granted the orders. The jurisdiction of Oyo State High Court was challenged on
the ground that the TDA gave exclusive jurisdiction to the NIC over such matters.

The Court of Appeal came to the conclusion that the declaratory and injunction
reliefs sought were outside the jurisdiction of the NIC by virtue of section 20 of
the Trade Dispute Act and held that the High Court ought not to have declined
jurisdiction since the orders sought were within its jurisdiction. The court relied
on the authority of *National Union of Road Transport Works v Ogbodo* and
*Western Steel Works Ltd v Iron & Steel Workers Union of Nigeria*.

Prior to 2006, NIC Act, both the High Courts and NIC were generally held to have
concurrent jurisdiction in the resolution of labour disputes. It has been noticed
that decisions of the NIC were sometimes subjected to the Federal High Court for
judicial review. An example of this is *SGS Inspection Services (Nigeria) Ltd V
Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)*. A
constitutional issue arose in the case of *NUFBTE V Dangote & Ors* where the

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592 (supra) According to Hon. Justice Kanyip, the decision in *Kalango V Dokubo* had the
additional problem of insisting that jurisdiction is conferred on a court only by sections labeled
“jurisdiction”.
593 (2004) 1 N.L.L.R (pt 3) 591;
594 See also *Ekong V Osied* (2004)All FWLR 562
595 (1998) 2 NWLR (pt 537) 189 at 191
596 (supra)
597 In *FRN V Adams Oshiomole* [2004] 1 NCLR 326 FCA the Court of Appeal directed that the
matter be heard by the Federal High Court. The reason adduced was that, for the fact that the
Federal Government was a party to the suit; According to Prof. Hon. Justice Kanyip, since the
issues were purely labour in nature, the appropriate court ought to be the NIC.
598 (Unreported) Suit No. NIC/3/2000 (summarized at pp 428-430 of the digest of Judgments of
the NIC (1978-2006)
599 (Unreported) Suit No. NIC/2/2008 delivered on April 2, 2009
judgment of NIC ordering the reinstatement of certain employees was sought to be judicially reviewed before the Lagos High Court. The NIC went ahead and held that its decisions cannot be subject to the supervisory powers of judicial review of the High Court.  

Post NIC Act 2006 Judgments of the NIC have addressed and reviewed to some extent the previous decisions that challenged the superior court of record status of the court and in addition, the power to order declaratory injunctive reliefs among other things. In AUPCTRE V FCDA and ASSIBIFI V Union Bank of Nigeria plc & ors, the NIC has held that inter and intra-union disputes are trade disputes which must go through part 1 processes of the Trade Dispute Act. It is vital to point out that under the 2006 Act; the Court has both original jurisdiction and appellate jurisdiction.


The Third Alteration Act of 2010, is a 16(sixteen) section Act of the National Assembly altering 12(twelve) major section of the 1999 Constitution of the Federal Republic of Nigeria. The developments, modifications and alterations introduced by the Third Alteration Act of 2010 cover the status, composition, powers, and jurisdictions of the court. The NIC and the international treaties especially the position of the constitution as provided for by section 12 of the same constitution shall be examined.

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601 Unreported Suit No NIC/17/2006 delivered on May 23,2007
602 Unreported Suit No NIC/11/2007
603 This decision has been criticized by Prof. C.K Agomo: see Agomo C.K op.cit page 335
604 See section 7(4) of the NIC Act, 2006 and Association of Senior Staff of Banks, insurance and Financial Institutions (ASSIBIFI V Union Bank of Nigeria Plc & Ors Suit No NIC/11/2007 delivered on January 2008 unreported
605 The affected sections of the Constitution which the Act altered are sections 6, 84, 240, 243,254, 287, 289, 294, 316 and 318; the constitution is referred to as “the principal Act” in the third Alteration Act.
8.5 POWERS OF THE NIC UNDER THE THIRD ALTERATION ACT
Section 2 of the Third Alteration Act, 2010 altered section 6(5) of the Constitution by inserting immediately after the existing paragraph (C) a new paragraph “(cc)” to include the National Industrial Court as Superior Court of Record. In the words of Hon. Justice Adejumo concerning the controversies:

“All that is now history, as the Act has effectively established the Court as a superior court of record”

8.6 COMPOSITION OF THE COURT
Under the Third Alteration Act, 2010, Section 254 of the Principal Act. A new sub-heading (cc) and section 254A-254F were inserted. Thus, the National Industrial Court shall consist of (a) President of the National Industrial Court and (b) such number of Judges of the NIC as may be prescribed by an Act of the National Assembly. Section 254b (4) excludes non legal practitioners from being appointed as judges of the Court. The person must have qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of less than ten years with considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria, (emphasis supplied). The multidisciplinary nature of labour made this requirement important.

8.7 JURISDICTION OF THE NIC UNDER THE THIRD ALTERATION ACT, 2010
Section 254C deals with jurisdiction of the court, the court has exclusive jurisdiction in disputes relating to or pertaining to any Labour, employment, trade unions, Industrial relations, and matters arising from work place, the

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606 Referred to as the “Principal Act”
607 With this alteration, the case of National Union of Electricity Employers and 1 Or. V Bureau of Pubic Enterprises (supra) seized to be the law. The Act of the National Assembly and the Constitution are hierarchically ranked above judicial pronouncements. See Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 as altered.
608 See Hon. Justice Adejumo’s Keynote address at the symposium held on 15th day of August, 2011; op.cit.
609 Unlike under the 1976 Act and the 2006 Act, no particular number of Judges is mentioned but subject to the Act of the National Assembly
610 It should be noted that the 2006 NIC Act allows the court to sit without the president. It is not a must for the president to preside over every sitting of the court.
610 By developing, these are economies that are labour intensive in its production capacity
611 Section 254C (1) of the Third Alteration Act, 2010
conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith.\textsuperscript{612} Matters relating to, connected with or arising from Factories Act, Trade Dispute Act, Trade Unions Act, Labour Act, Employees’ Compensation Act or any other Act or Law relating to Labour, Employment, industrial relations, workplace or any other enactments replacing the Acts or Laws,\textsuperscript{613} relating to or connected with a grant of any other restraining any person or body from taking part in any strike, lock-outs or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters connected therewith or related thereto;\textsuperscript{614} relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations, trade Unionism, employer’s Association or any other matter which the court\textsuperscript{615} has jurisdiction to hear and determine;\textsuperscript{616} relating to or connected with any dispute arising from national minimum wage for the federation or any part thereof and matters connected therewith or arising therefrom;\textsuperscript{617} relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relations matters;\textsuperscript{618} relating to or connected with any dispute arising from discrimination or sexual harassment at workplace collective agreement, minimum wage, payment or nonpayment of salaries, pension and other emoluments, discrimination, sexual harassment at the work place; relating to, connected with or pertaining to the application or interpretation of international labour standards;\textsuperscript{619} connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;\textsuperscript{620} relating to the determination of any question as to the interpretation and

\textsuperscript{612} See section 254C (a) CFRN,1999 as altered
\textsuperscript{613} See section 254C (1)(b) CFRN 1999 as altered
\textsuperscript{614} Section 254C(1)© CFRN 1999as altered
\textsuperscript{615} The Court here refers to the NICN
\textsuperscript{616} Section 254C (1)(d) CFRN, 1999 as altered
\textsuperscript{617} Section 254C(1)(e) CFRN 1999 as altered
\textsuperscript{618} Section 254C(1)(f) CFRN, 1999 as altered
\textsuperscript{619} Section 254C(1)(g) CFRN, 1999as altered
\textsuperscript{620} section 254C(1)(h) CFRN, 1999 as altered; see also international best practice in labour or Industrial relations and what amounts to good or international best practice shall be a question of fact.
\textsuperscript{621} Section 254C(1)(i) CFRN, 1999as altered
application of any\(^{622}\);relating to or connected with disputes arising from payments or nonpayment of salaries, wages, pensions\(^{623}\), gratuities, allowances, benefits and other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the federation and matters incidental thereto\(^{624}\); relating to appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith, appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions, or industrial relations and such other jurisdiction, civil or criminal and whether to the exclusion of any other Court or not, as may be conferred upon it by an Act of the National Assembly\(^{625}\); relating to or connected with the registration of collective agreements\(^{626}\).

The jurisdiction of the NIC under the third Alteration Act is wide in scope as it is invested with exclusive jurisdiction on employment related matters.

8.8 THE NIC AND RATIFIED INTERNATIONAL TREATIES
Prior to the promulgation of the Act, the law has always been that, before any international treaty will have the force of law in Nigeria, such international instrument must have been ratified and domesticated\(^{627}\). Section 12(1) of the 1999 Constitution\(^{628}\) provides:

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\(^{622}\) ‘any’ here refers to collective agreement; award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute; award or judgment of the court; terms of settlement of any trade dispute; trade union dispute or employment dispute as may be recorded in a memorandum of settlement; trade union constitution, the constitution of an association of employers or any association relating to employment. Labour industrial relations or workplace and dispute relating to or connected with any personal matter arising from any free trade zone in the federation or any part thereof. See section 254C(1)(j) CFRN, 1999 as altered.

\(^{623}\) See Pension Reform Act, 2014, especially section 120 which this group has criticized under our assessment and recommendations.

\(^{624}\) Section 254C(1)(k) CFRN 1999 as altered.

\(^{625}\) Section 254C(1)(l) CFRN 1999 as altered.

\(^{626}\) Section 254C(1)(m) CFRN, 1999 as altered.

\(^{627}\) This is called dualism. See section 12 of the constitution of the FRN 1999 as altered.

\(^{628}\) CFRN 1999 as altered.
“No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

This provision does not apply to the National Industrial Court of Nigeria by virtue of Section 254C (2) of the 1999 Constitution which provides;

“Notwithstanding anything to the contrary in this constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to Labour employment, workplace, industrial relations or matters connected therewith.”

This is in conformity with international best practices as far as labour and employment law is concerned. The law on labour and employment relations matters, as stated by the Supreme Court of Nigeria, in R.T.N.A.C.H.P.N V M & H.W.U.N has changed with the introduction of Section 254C (2) of the 1999 Constitution. In that case, the Court held that ‘insofar as the International Labour Organization (ILO) Conventions have not been enacted into law by the National Assembly, they have no force of law in Nigeria, and they cannot possibly apply’.  

8.9 NIC CRIMINAL JURISDICTION

Section 254C(5) CFRN 1999 as altered confers criminal jurisdiction on the Court in causes and matters arising from any causes or matters of which jurisdiction is conferred on the National Industrial Court by the Section or any other Act of the National Assembly or by any other law. Criminal causes like fraudulent appropriation of employees’ salaries, theft etc. that have criminal connotation in all labour and employment matters can be tried by the court although appeal on such matters are as of right to the Court of Appeal.  

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629 (2008) 2 N.W.L.R (PT1072) 575. The subject matter of the appeal was the enforceability of ILO Conventions 87 and 98, whether or not they are justifiable.
630 The Supreme Court of Nigeria
631 See Section 254(c)(6) of the Constitution Third Alteration Act, 2010
8.10 APPEALS ON THE DECISIONS OF THE NIC

Section 243(b) (2)-(4) of the Constitution of the Federal Republic of Nigeria introduced by the Third Alteration Act, 2010, limits appeals on the decision of the court to fundamental rights matters. Section 254 c (6) adds criminal causes and matters as matters that can be appealed as of right. The decision of the Court of Appeal is final on this. 632

It must be pointed out that, during the pendency of this work, before the final publication, the Supreme Court of Nigeria delivered a judgment that borders on whether or not the NICN’s, decision is final. Although, the case has not been officially reported in any law Report as at the time of completing this work, however, it remains the law on appeals on the decisions of the NICN.

The case is Skye Bank PLC V Victor Anaemen Iwu 633 which was consolidated with another related case Coca-Cola Nigeria Limited V Mrs. Titilayo Akinsanya 634 in which the Court of Appeal Lagos Division had in 2013 held that there is no general right of appeal for a litigant, against the decision of the NICN except as limited in Section 243(2) – (4) of the 1999 Constitution as amended.

On 30th day of June, 2017, the Supreme Court in a leading judgment delivered by Mary Peter-Odidi JSC, the Court in a unanimous decision held that the Court of Appeal has jurisdiction to hear and determine appeals in all matters (to the exclusion of other Courts) from the National Industrial Court of Nigeria and that this is not limited to issues of fundamental rights.

The pronouncement of the Supreme Court is the law as ‘it is’ not the law as ‘it ought to be’. However, it is doubtful whether this decision does not contradict the express provision of the Constitution 635. This author may not comment more than this, until the entire judgment is perused and studied critically to see the rationale and legal reasons adduced and relied upon by the Supreme Court. It appears, the Supreme Court has amended the Constitution on appeals from

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632 See Section 243(b)(4) of the Constitution of The Federal Republic of Nigeria, 1999, Third Alteration Act, 2010; see Section 9(2) of the NIC Act, 2006 on appeals as of right on fundamental rights cases
633 Unreported
634 Unreported
635 See the Third Alteration Act, 2010.
NICN\textsuperscript{636}. It is submitted, with this new pronouncement by the Apex Court, employees who have been unlawfully terminated will have legal hurdles to cross up to the Court of Appeal before justice can be guaranteed.

\textbf{8.11 ASSESSMENT}

The Third Alteration Act, 2010 has changed the face of labour law and its practice in Nigeria. The court being a specialized court has overcome its challenges of status, power and jurisdiction. The approach of the court in awarding damages for wrongful exercise of the right to terminate employment is commendable.\textsuperscript{637} In the bid to avoid rigidity and the common law courts’ practice of paying more attention to ‘litigating the margin’\textsuperscript{638}, the NICN in its rules of court make provisions against technical justice\textsuperscript{639} and avoid things that may constitute cogs in the wheel of justice. It is hoped that, the Court will not go back to rigidity and technicality prevalent in common law courts.\textsuperscript{640}

Although, the court has changed from what it used to be with the introduction of the Third Alteration Act, 2010. It however appears that the court still has many challenges. A specialized court of this nature is helpful in many areas; for instance, ordinary courts of law were regarded as too slow. These courts did not have the necessary expertise to settle disputes arising out of collective agreements; thus, restrict

\textsuperscript{636} It is submitted, where two sections of the Constitution are contradictory, the provision with general or public benefit will override that of the provision with individual benefit or restricted advantage.


\textsuperscript{638} Litigating the margin is the practice in which counsel handling cases use technicality to outsmart each other. Sometimes, admissibility of evidence can be dragged and argued for months and the other party may appeal interlocutory rulings while the substantive matter is still pending; see \textit{Nipol Ltd V Bioku Investment & Property Co LTD} (1992) 3 NWLR (Pt 232) P.727 @P.783.

\textsuperscript{639} See Order 5 Rule 3; see also section 12(1)(b) NIC Act, 2006 which provides that, the court shall be bound by the Evidence Act but may depart from it in the interest of justice

\textsuperscript{640} See Order 5 Rule 3 NICN Rules, 2007 which provides that, the Court may depart from these Rules where the interest of Justice so requires. See also Order 15 NICN Rules, 2007 which empowers the Court to adopt such procedure as will in its view do substantial justice to parties. On substantial Justice see the case of \textit{Nwazurike & Ors V A.G Federation} (2013) 3-4 M.J.S.C (pt II) P.174 @ p 198 Para D
the need for a separate labour court of special composition would more easily gain the confidence of workers’ organizations.\textsuperscript{641} However, there are rooms for improvements and a review of certain labour statutes; for instance, Section 120 of the Pension Reform Act, 2014,\textsuperscript{642} interprets Courts of competent jurisdiction to include Federal High Court, High Court of the Federal Capital Territory, High Court of a State, and the National Industrial Court as Courts that have Jurisdiction over pension matters. Such sections need to be amended in conformity with Section 254C (1) of CFRN 1999, as altered on the exclusivity of the Jurisdiction conferred on the NICN.

\textbf{SUMMARY}

This chapter examines the historical background of the NIC and its powers, jurisdiction, composition and status before and after the Third Alteration Act, 2010 which amended the Constitution of the Federal Republic of Nigeria, 1999. This chapter further examines the NICN Act in detail as well as the new jurisdiction (such as criminal jurisdiction) granted the NIC. The special provision with regard to the power of the court to apply yet to be domesticated treaties was also discussed.

\textbf{REVIEW QUESTIONS}

1. Examine National Industrial Court of Nigeria before the Third Alteration Act, 2010

2. Examine the NIC under the NIC Act, 2006

3. NIC is no longer an inferior court. Discuss.

4. Discuss the jurisdiction of the NIC under the Third Alteration Act, 2010

5. NIC has powers to apply ratified international treaties on labour matters even if, the treaties have not been domesticated. To what extent do you agree with this statement?


\textsuperscript{642} See the Pension Reform Act 2014, LFN 2014 signed by the Clerk to the National Assembly, dated 16\textsuperscript{th} Day of June, 2014
6. NIC judgments can only be appealed in some special cases. Discuss
CHAPTER NINE

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Objective
At the end of this chapter, students/readers should be able to explain, appreciate and apply the following concepts.

(i) Nature, meaning and types of ADR
(ii) ADR principle
(iii) ADR in Industrial/Trade Dispute Settlement
(iv) National Industrial Court Alternative Dispute Resolution (ADR) Centre Instrument, 2015

9.0 INTRODUCTION AND THE NATURE OF ADR
The unduly long delay in litigation made a paradigm shift in our Legal System imperative. This has led to the introduction of an alternative dispute resolution system. This is undoubtedly not unconnected with the demands of the Courts in various jurisdictions encouraging amicable resolution of disputes before resorting to litigation\(^{643}\) which ought to be the last resort. Thus, an understanding of the various dispute resolution mechanisms becomes expedient. It is appreciable that conflict or dispute resolution outside the Court engenders mutual co-existence. It guarantees continued friendship and harmony after settlement of dispute; aside its cheaper nature\(^ {644}\). In Nigeria today, it is mandatory for a Legal Practitioner to inform his client on the importance of ADR which is further provided for in Rule 15(3)(d) of the Rules of Professional Conduct for Legal Practitioners\(^ {645}\).

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\(^{643}\) Some contract of employment documents contain an Arbitration clause in which Arbitration mechanism must be applied before litigation can suffice. See also Rule 15(d) Rules of Professional Conduct for Legal Practitioners, 2007.

\(^{644}\) In settlement of trade dispute, litigation via the National Industrial Court is the last option. The Act specifies steps to take. See sections 3,4,6,8 and 9 of the Trade Dispute Act, 1976.

\(^{645}\) In his representation of his client, a lawyer, shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanism before resorting to or continuing litigation on behalf of his client.
This provision clearly implies that failure to comply amounts to professional misconduct. Lawyers are by this rule expected to explore any of the available ADR mechanism before resorting to litigation.

The provisions of section 254C (3) has no doubt confirmed the position of ADR as a means of dispute resolution. This section empowers the National Industrial Court to establish an Alternative Dispute Resolution Centre, within the premises of the Court on matters in which jurisdiction is conferred on the Court. The purpose of this is to promote industrial harmony even when issues arise between employer and employee. Since ADR most times engender a WIN-WIN situation. It is imperative that its usefulness in setting industrial disputes cannot be over-emphasized.

9.1 DEFINING ALTERNATIVE DISPUTE RESOLUTION (ADR)
Alternative dispute resolution is any means of achieving a mutually acceptable solution to disputes; agreed to by the parties without resort to the conventional court litigation. The settlement reached by the parties can be made binding by reducing it into writing, signing by them and, filing it in Court as a consent judgment.

Agabu posits that ADR refers to all the various processes of resolving disputes between parties other than the formal court system. He further argued that arbitration, contractual adjudication and other forms of third party determination

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646 Rule 15(d) of the Rules of Professional Conduct for Legal Practitioners, 2007 provides. A lawyer shall represent his client within the bounds of the law and shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanism before resorting to or continuing litigation on behalf of his client.

647 See Rule 15(d) RPC, 2007

648 The 1999 Constitution of the Federal Republic of Nigeria as amended by the Third Alteration Act, 2010


650 See section 25C(1)Constitution of the Federal Republic of Nigeria as altered

651 Dispute Resolution through conciliation or mediation is always a win-win matter as parties in most cases may surrender some rights to each other for amicable resolution or settlement.

are classified as ADR options even though in these cases there is a final decision by a third party just like a decision of a court.

The role of the third party in ADR is not really to give a final decision rather he is to bring about an agreement by parties in dispute by identifying areas of agreement and then ensure agreement in areas that are contentious\(^{653}\). The agreement reached by the parties is what is referred to as an award.

Alternative dispute resolution may and may not be court connected. The provisions of National Industrial Court of Nigeria Alternative Dispute Resolution ADR Centre Rules, 2015 give credence to the court’s position and connection to ADR. The power to make this rule is derived from section 254C (3) of the 1999 Constitution.

9.2 TYPES OF ALTERNATIVE DISPUTE RESOLUTION

There are four basic Alternative Dispute Resolution methods namely:

1. Mediation
2. Arbitration
3. Negotiation
4. Conciliation

9.2.1 Mediation

Mediation refers to “a voluntary and informal process in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching a mutually acceptable settlement”.\(^{654}\) The neutral body called the mediator does not decide how the dispute should be settled. He merely facilitates the arrival at an amicable settlement by keeping communications by parties open\(^{655}\).

\(^{653}\) Contentious areas are always technical; these are where issues are joined. They require expertise of the mediators or Arbitrators for compromise to be reached.


It is noteworthy that it was civilization that brought about the court system; urbanization relegated the traditional mediation into the background though customary ADR is recognized under the Nigerian Legal System. This clearly shows that mediation as a means of conflicts resolution is in no way alien to Nigerians. This position was further observed by Justice Oguntade thus: ‘In the pre-colonial time and before the advent of the regular court, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom’.

Mediation as a means of dispute resolution is now structured such that the courts see it as alternative means of resolving dispute. There are some provisions in various state High Court Laws and the recent National Industrial Court ADR Centre Instrument, 2015.

9.2.2 Arbitration
Arbitration refers to a system of dispute resolution whereby disputing parties refer the matter to a private tribunal or persons for settlement in a judicial manner. It is a private law system available only to those who agree to use it, instead of litigation. Animashaun define arbitration as “an adjudicatory dispute resolution process in which one or more arbitrators judge issues on merit (which may be binding or not binding) after an expedited adversarial hearing, in which each party has the opportunity to present proofs and arguments”. An example of this is the trade dispute settlement by the Industrial Arbitration Panel.

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656 See John O. Asein, Ibid pg. 324
657 Okpwuru v Okpokan (1998)4 NWLR (pt 90) 554 at 586
658 See section 24 High Court Rules of Lagos State, section 29 High Court Rules of Rivers State, section 22 High Court Rules of Bornu State cap 63 Laws of Bornu state 1994.
659 See the NKN, ADR centre instrument, vol. 2, 2015
661 See section 4-9 Trade Dispute Act, LFN, 2010
However, for an agreement to qualify for arbitration, it must be in writing\textsuperscript{662}. Where an action is the subject of an arbitration agreement, the court can enforce the arbitration agreement and direct the parties to go to arbitration\textsuperscript{663}.

An arbitral award which is the final decision in arbitration is enforceable as a judgment\textsuperscript{664}. It can also be set aside\textsuperscript{665}. The arbitral tribunal or members of the arbitral panel, called “arbitrators” are normally made up of people knowledgeable in the field of dispute management.

\textbf{9.2.3 Negotiation}

This is a problem solving process where disputing parties; two or more voluntarily discuss their differences and attempt to bargain among themselves for an amicable settlement\textsuperscript{666}. The disputants attempt to reach a joint decision on their common concerns.\textsuperscript{667} Efevwerhan\textsuperscript{668} states that there are two types of negotiation namely, the positional approach also called the win-lose approach; and the integrative or problem-solving or win-win approach. He explained that in the former, the parties take opposing and often dogged positions and negotiate from their vantage position. In the latter, the parties are open and ready to compromise in order to reach an amicable settlement\textsuperscript{669}. Since the objective of Alternative Dispute Resolution is harmony after resolution of disputes, the problem solving approach seems to engender long-lasting relationship as trust and confidence which is the fulcrum of peace and harmony are guaranteed\textsuperscript{670}.

Negotiation can be applicable both in court and criminal matters. This implies that negotiation as an ADR is not restricted to civil matters only. Plea bargaining is an example of negotiation in criminal matters\textsuperscript{671}. No doubt some statutes provides

\textsuperscript{662}See section 1 Arbitration and Conciliation Act cap 19, 1990 Laws of Nigeria
\textsuperscript{663}See section 4 and 5 Ibid
\textsuperscript{664}See section 31 and 51 Ibid
\textsuperscript{665}Section 14 Trade Dispute Act, LFN, 2010
\textsuperscript{666}See NICN, ADR instrument vol. 2 2015 op.cit.
\textsuperscript{667}Halpern, A Negotiating Skills (London, Blackstone Press Ltd) 1992 pg 3.
\textsuperscript{668}Efevwerhan, D.I. op. cit.
\textsuperscript{670}See Efevwerhan, D.I. op. cit.
\textsuperscript{671}See Economic and Financial Crime Commission Act, 2004
for it in Nigeria, giving the accused persons the opportunity to negotiate with the prosecution. Plea bargaining was first used in Nigeria by Economic and Financial Crimes Commission (EFCC) in the trial of the former Inspector General of Police Mr. Tafa Balogun and later in the case of late Diepreye Alamieseigha, the ex-Governor of Bayelsa State. Plea bargaining has been condemned by some legal practitioners and scholars. The fact that the accused person surrenders a portion of the money which he has embezzled and for which he is being tried has made some scholars to describe it as “celebrity justice”. The Administration of Criminal Justice Act 2015 also expressly provide for it.

9.2.4 Conciliation

Conciliation involves a situation where a third party known as a conciliator is obliged to use his best endeavours to bring the parties in a dispute to a voluntary settlement of their dispute. The conciliator will listen to all parties. The parties will present their case. Having listened to them, he will prepare a draft term of settlement and submit same to parties for their consideration.

The arbitration and conciliation Act provides for right to settle disputes by conciliation. The Act confers right to settle dispute by conciliation. It empowers the conciliator to explore opportunities for the settlement of disputes before him.

Conciliation and mediation are used interchangeably in Nigeria even for the purpose of Arbitration and Conciliation Act. As a general rule conciliation is essentially governed by the decision of the parties. It is also governed by the enabling statutes as operative in Nigeria. Types of disputes for conciliation include commercial and corporate disputes, franchise, agency, intellectual property, industrial and labour disputes; family disputes, community and neighbourhood disputes and International disputes. No doubt conciliation as an alternative dispute resolution mechanism is developing in Nigeria.

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672 See section 13(2), Economic and Financial Crimes Commission Act, 2004
674 See part 28, section 270 (1) to 18, Administration of Criminal Justice Acts 2015.
676 Section 35-55 of the Act
677 Section 37 of the Act
9.3 **ADR PRINCIPLES**
The principles of the ADR appear to be the same in all the types of the ADR mechanisms. This is a result of the fact that ADR generally is an alternative to litigation, geared towards amicable resolution of disputes. Courts exist and are maintained by the state to provide dispute settlement services for parties. It is the statutory responsibility of the state to ensure that Courts are established and staffed with qualified judges appointed to hear and determine cases brought before them. ADR is predicated primarily on the agreement of the parties to explore ADR. It follows that they have a right to go by litigation where they disagree.

ADR is procedurally informal. Parties to Arbitration for example must have agreed to terms that the procedure will be informal and would be devoid of complexities of Court procedures in matters of litigation. The objective is to ensure the simplicity of process.

Impartial, knowledgeable and neutral persons are to serve as arbitrators, conciliators and mediator since there are varied interests and field in human endeavour from which dispute may arise. It is of utmost importance that only experts knowledgeable in the subject matter and points of disputes should arbitrate or mediate. The essence of this is to ensure that a proper decision is arrived at while the third party does not have any interest in the dispute.

ADR can only take place if both parties have agreed to it. Where one of the parties elects to opt for litigation he is at liberty to do so except there is an agreement with an arbitral clause. In such a case, the ADR or arbitration option will have to be explored. It is only where the disagreeing party is not satisfied with the award that he can challenge it and such award will no longer qualify for consent judgment. Unlike mediation, a party cannot unilaterally withdraw from arbitration voluntarily.

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678 See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 as altered
679 See section 6 of the CFRN, 1999 as altered
680 Section 14 Trade Dispute Act, LFN 2010
681 Section 14 Trade Dispute Act, LFN 2010, Ibid
682 This is to avoid conflict of interest.
683 Section 29 of ACA 1990.
Sometimes ADR may be ordered by the Court. It may be statutorily recommended as in some cases, the court ordered ADR may leave both parties with no option than to resolve their dispute through ADR. For instance, the courts are duty bound to adjourn proceedings to allow for possible settlement of the dispute by the parties in marriage except the matter is of such a nature that it will not be appropriate to do so. Failure to attend by any party may be to his or her or detriment as a fine may be imposed.

Where a statute prescribes a legal line of action for the determination of an action, irrespective of the subject, the aggrieved party must exhaust all remedies in the law before going to court. Although ADR is voluntary, failure to attend by any party makes the objective defeated.

9.3.1 Non-bindingness of Terms of Settlement
Settlement of disputes through ADR depends on the participation and agreement of parties involved, parties can only be persuaded to resolve their differences amicably through ADR. Where parties decide not to settle, then the matter will be resolved through litigation. However, where parties settle, the terms of settlement will be adopted as consent judgment of the National Industrial Court.

9.3.2 Confidentiality
According to Hobbs, ‘confidentiality is a critical element of successful mediation. In order for the mediator, the attorneys and the clients to understand the central issues, the motivations, the pressure points and the risks of litigation, the participants must be assured the discussions cannot and will not be disclosed to others so they can talk openly. If discussions with the mediator are not confidential and privileged, the mediation process, the mediator’s role and the potential for resolution are significantly diminished.

684 See section 111 Matrimonial Causes Act.
In many jurisdictions, confidentiality rules are considered so important that they are both statutory and regulated by codes of conducts and ethical standards. The confidentiality of the ADR proceedings makes it distinct. The parties are at liberty to determine who and who attend the sittings. As a matter of principle ADR proceedings are not open to the public. This is a major significant difference between court and ADR proceedings.

9.3.3 Neutral Mediator
The hallmark of the ADR process is the neutrality of the third party; the capacity of parties to trust and repose confidence in the third party is crucial to the success of the ADR proceedings. The third party must not have any interest in any of the parties; else the objective intervention would be compromised. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediator except with the written consent of the parties.

9.3.4 The Parties’ Settlement
ADR is generally parties centered. It confers a level of authority on the parties. In fact, the disputants are in control of the settlement as it is only attainable when parties agree to resolve their differences through the ADR process. It is on this note that fulfillment of terms of agreement becomes indispensible. Although with recent developments in the administration of Justice through ADR process, the courts may impose sanctions on parties that reject or refuse to attend the mediation process.

However, for a party to evade mediation, he has to show that mediation would have no reasonable prospect of success.

9.4 ADR IN INDUSTRIAL/TRADE DISPUTE SETTLEMENT
Conflict is an inevitable part of everyday working life and it has been so noted by Pioneer, that “people get struck in conflict at work or a number of reasons. Conflict defines us, validates our behavior and strengthens our bonds with allies. It is very difficult to move on from conflict without compromising this identity and losing face. Yet remaining in conflicts make us lose perspective and the

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688 See Rules 6(a) of the Abuja Multi-door Court House
opportunity of self-development. It is also toxic to the person involved and those surrounding the conflict⁶⁹⁰.

Factors that account for industrial cum workplace dispute include conflict of interests or differential bargaining power and differences of the parties; in fact, they are catalyst for escalation of industrial disputes. It has been rightly observed by a commentator that “Those who populate the workplace today are better educated, more sophisticated, more diverse and more demanding. Getting to grips with workplace conflict inside organizations today is an increasingly important matter at both organizational and individual level⁶⁹¹.

The complexities of the workplace today call for a management and dispute settlement framework or model that will guarantee optimum performance. The capacity to resolve or settle industrial disputes effectively contributes to the quality of the working environment and has a significant impact on the organizational performance in terms of reducing days lost, enhancing productivity and improving management/employee relations.

Since it has been noted that, ADR offers a model of conflict resolution that is less formal, cheaper and further guarantees harmonious working relationship, its importance in trade dispute settlement cannot be over-emphasized. ADR offers options where disputes are speedily and fairly resolved to the mutual satisfaction of all parties involved. It is for this reason that both public and private organizations consider incorporation of ADR into their dispute resolution procedures. It is making litigation the last resort having exhausted all ADR options. It is instructive to note that ADR offers a means of bringing industrial or workplace justice to more people at lower cost and also helps to clear the backlog of cases at statutory dispute resolution institution, thus enhancing government and organizations performance in meeting its objective.

Explosion in disputes between employers and employees are said to have been occasioned by sharp increase in joblessness. The Labour Relations Commissions of

the United Kingdom in its 2009 annual report state that, there are 14, 596 referrals to the Labour Relations Commission 2009 a 33% increase compared to increase compared to 2008"692

The above statistics gives credence to the possibility of resolving a significant number of disputes through the use of ADR mechanism. The benefits accruable from adoption of ADR in conflict resolution cannot be overemphasized. It engenders greater transparency within the workplace, procedural flexibility, efficiency and confidentiality which provides privacy for the parties and protection for the organization’s reputation.

ADR can also offer greater sensitivity to the needs of particular workplace and their employees especially in a highly sensitive and personal dispute such as sexual harassment claims and gender-related issues. The terms of agreement under ADR may contain a wide range of novel outcomes which would not normally form part of a court decision or agreement and which may provide solutions that better suit each party’s needs and divergent workplace peculiarities.

English Courts have also recognized the role of mediation in the resolution of workplace conflicts as demonstrated in the Appeal case of Validi v Fourstead House School Trust Ltd 693. The Court stressed the appropriateness of mediation for resolving workplace disputes694.

9.5 NATIONAL INDUSTRIAL COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) CENTRE INSTRUMENT 2015

The Federal Government of Nigeria Official Gazette No.37, vol. 102, Lagos, dated 8th April, 2015 published the ADR Instrument that will be used by the National

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693 (2005) ECWA Civ. 06
694 See also McMillan Williams v Range (2004) ECWA Civ. 294
Industrial Court of Nigeria in settling industrial disputes. The Instrument has ten articles. Article 1 provide for the applications of the Instrument which shall be primarily to ADR centre established pursuant to section 254C (3) of the 1999 Constitution of the Federal Republic of Nigeria as altered.

Article 2 established the ADR centre in the Premises of the National Industrial Court. The Instrument established six ADR centres - the North-Central Zone, Abuja ADR centre in Abuja; North-East Zone in Gombe ADR centre in Gombe; North-West Zone-Kano ADR centre in Kano; South-East Zone, Enugu ADR centre in Enugu; South-South Zone, Warri ADR centre in Warri; and South West Zone, Ibadan ADR centre in Ibadan. The President of the court is empowered to relocate any of the centres to any of the states in the zone, in the interest of peace, security or any unforeseen contingency which may make the operation of the centre impossible or unsafe. The centre shall be responsible for the resolution of conciliation mechanisms of the alternative dispute resolution under the supervision and control of the president of the Court.

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695 The Federal Government of Nigeria also published the Centre Rules of procedure known as National Instrument Court of Nigeria ADR Centre Rules, 2015. The preamble to the Rules provide, “In exercise of the powers conferred on me by section 254C (3), 254F (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended by the Third Alteration Act, 2010) and section 36 of the National Industrial Court, 2006, and Article 2 paragraph (5) of the AID centre Instrument 2015, and other powers enabling me in that on behalf; I... hereby make the following rules to govern the practice and procedure of the National Industrial Court ADR centre of the NICN. Order 1, Rule 2 of the Centre Rules provides. These rules shall apply to all proceeding referred to the ADR centre for settlement of disputes including all part-heard causes and matters in respect of steps and procedures to be further taken in such causes and matters for the attainment of a just, efficient and speedy dispensation of justice.

696 The ADR centre within the NICN premises shall be referred to as “the centre. See Article 1 of the Instrument.

697 See Article 2 (3) of the Instrument

698 See Article 2 (3) (b)

699 See Article 2 (4) (a) & (b). The providing has pure, to assign and designate or direct the assignment and designation of a Director and other staffers of the centre; receive regular updates on the overall activities of the centre, and take any action or give direction which he or she may consider appropriate or necessary for the overall effectiveness and growth of the centre to enhance fast and effective justice delivery.
Article 3 of the Instrument\textsuperscript{700} provides for the personnel of the centre, conditions of service and organogram. Article 4 provides for the mandate and functions of the centre which shall amongst other things, be the application of mediation or conciliation technique in the settlement of disputes between or amongst parties\textsuperscript{701}. It must be pointed out that the Introduction of the ADR Instrument is to enhance and facilitate quick, efficient and equitable resolution of certain employment, labour and industrial relations disputes within the jurisdiction of the Court; to minimize, reduce, mitigate and eliminate stress, cost and delays in justice delivery by providing a standard Alternative Dispute Resolution framework for fair, efficient, fast and amicable settlement of disputes; to assist disputants in the resolution of their disputes without acrimony or bitterness\textsuperscript{702}.

Matters in which the instrument shall apply to shall be matters listed in paragraph (5) (a)-(d) of Article 4 and shall be matters in referral to the centre by the President of the Court or a Judge of the Court or by parties mutually opting to use mediation or conciliation processes for the resolution of their matter, upon the commencement of an action and joining of issues\textsuperscript{703}. Any of the parties to a dispute may apply to the President of the Court for the resolution of the action already filed through the process of mediation or conciliation\textsuperscript{704}.

\textbf{9.5.1 Matters that Qualify for Mediation or Conciliation}

The instrument provides that the centre shall have power to mediate or re-conciliate in the following subject matters in which the Court has jurisdiction as

\begin{itemize}
\item \textsuperscript{700} The Instrument here means, National Industrial Court of Nigeria, ADR Centre Instrument, 2015
\item \textsuperscript{701} See Article 4 of the Instrument
\item \textsuperscript{702} See Article 4 (1)-(3) of the Instrument
\item \textsuperscript{703} See Article 4 (4) (a). the legal implication of this provision is that, matters for ADR centre may be referred to the Court either by the president of the Court, or a judge of the Court or parties after filing an action in the National Industrial Court of Nigeria, may upon mutual agreement decide to take the matter to the ADR centre for mediation or conciliation.
\item \textsuperscript{704} See Article 4 (4) (b) of the instrument
\end{itemize}
provided for in section 254C (1) (a)\textsuperscript{705}, section 254C (1) C\textsuperscript{706}, section 254C (1) (g)\textsuperscript{707} and section 254C (1) k\textsuperscript{708}.

The instrument forbids the bringing of extraneous matter or issue not contained in the originating process filed before the Court during any of the mediation or conciliation session(s) after the issues joined in the Court have been referred to the centre\textsuperscript{709}. The instrument\textsuperscript{710} further provides that ‘the centre shall not have power to entertain any interlocutory application\textsuperscript{711} or grant any order or interpret any matter before it. The ADR officers are prevented from imposing their personal opinions on the parties during mediation or conciliation\textsuperscript{712}. Thus, the centre does not have power like the Court\textsuperscript{713}. The National Industrial Court has power to suo-motu refer a pending matter or part-heard matter filed before it before the

\textsuperscript{705} Section 254C (1) (a) of the CFRN, 1999 as altered are matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith.

\textsuperscript{706} There are matters relating to or connected with disputes arising from any strike, lock-out or any industrial action or any conduct in contemplation or in furtherance of a strike, lock-out, or any industrial action and matters connected therewith or related thereto: see also section 48 of the Trade Dispute Act, 1976 which defines strike; \textit{Tramp shipping Corporation v Greenwich Marine Inc.} (1975) All E.R 898 at 890 on the deformation of strike.

\textsuperscript{707} There are matters relating to or connected with dispute arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto.

\textsuperscript{708} There are matters in which the Court has exclusive jurisdiction over under section 7 (1) (a) & (b) of the National Industrial Court Act, 2006 namely, labour, including trade unions and industrial relations; and environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto.

\textsuperscript{709} See article 4 (6) of the instrument.

\textsuperscript{710} ADR centre instrument, 2015

\textsuperscript{711} Interlocutory application is a motion either ex-parte or notice in which an order of court is sought to do or abstain from doing any act during the pendency of the suit. The order given are appealable. Thus, the philosophical justification for preventing interlocutory application may not be unconnected with the prevention of technical delays and frivolities. It is only the Court that can entertain interlocutory applications see Article 4 sub-articles 8 (a)

\textsuperscript{712} See Article 4 (10) of the instrument

\textsuperscript{713} Article 4 (11) of the instrument
commencement of the instrument to the ADR centre for mediation or conciliation.\textsuperscript{714}

ADR instrument, 2015, has another salient advantage, this is the liberty given to any person(s) wishing to mediate or conciliate his or her dispute at the centre, to apply to the President of the Court without necessarily filing a suit at the Court. This, the president of the Court can do within the provisions of the instrument and the Rules made thereto.\textsuperscript{715} Agreements reached by the parties after mediation or conciliation may be registered as terms of settlement between the parties. This will be binding on the parties\textsuperscript{716} such terms of settlement can be enforced as by the Court.\textsuperscript{717}

Parties have right to settle or not to settle their dispute at the ADR centre.\textsuperscript{718} Upon the conclusion of the mediation or conciliation session(s), a report of any matter referred to the centre by the President of the Court or a Judge of the Court shall be made to the President of the Court or a Judge of the Court that made the referral.\textsuperscript{719} Where a matter is not resolved through the ADR process, the matter shall be remitted back to the President of the Court or a Judge of the Court who made the referral within 5 working days for adjudication in accordance with the Rules of the Court.\textsuperscript{720}

It is finally submitted, with the introduction of Alternative Dispute Resolution to employment/labour dispute management cum adjudication, it is hoped that, unnecessary delay will be removed; cost of litigation will be minimized; technicalities associated with advocacy such as ‘litigating the margin’\textsuperscript{721} will be eradicated. Employment matters are matters of life and death. Such matters

\textsuperscript{714}Article 4 (15) of the instrument.
\textsuperscript{715}See Article 4 (17) (a) of the instrument.
\textsuperscript{716}Article 4 (17) (b).
\textsuperscript{717}Article 4 (17) (c); the Court here is the National Industrial Court of Nigeria.
\textsuperscript{718}See Article 4 (22) of the instrument.
\textsuperscript{719}See Article 4 (23) of the instrument.
\textsuperscript{720}See Article 4 (22) of the instrument.
\textsuperscript{721}Litigating the margin is the use of technicalities in advocacy. This includescapitalizing on forms rather than the substance. A counsel of one party can argue admissibility of a document for months, appeal the ruling on his argument if not in his favour, thereby occasioning delay in the dispensation of justice. Sometimes, typographical errors or mistakes can be made a major point of argument. Thus, the NIC Act and Rules abhor technicalities.
need speedy dispensation of justice in the interest of justice for the parties in a dispute.

**SUMMARY**

This chapter defines and explains the nature of ADR. It states and distinguishes the different types of ADR, the principles of ADR and the statutes and rules backing the court connected ADR under the NIC Act and Rules.

**REVIEW QUESTIONS**

1a. Explain the concept ADR?

b. What are the advantages of ADR over Litigation?

2. Write notes on the following:
   (a) Mediation
   (b) Arbitration
   (c) Negotiation
   (d) Conciliation

3. Discuss the salient principles of ADR.

4. Examine the usefulness of ADR in settlement of trade disputes.

5. Discuss the provisions of the ADR centre instrument of the National Industrial Court of Nigeria.

6. Identify and discuss matters that are qualified for ADR under the NIC.
CHAPTER TEN

INTERNATIONAL LABOUR ORGANISATION CONVENTIONS AND INTERNATIONAL INSTRUMENTS

Objective
At the end of this Chapter, Students/readers should be able to explain, appreciate and apply the following conventions and international instruments to industrial relations in Nigeria and beyond.

(i) Application of international treaties in Nigeria
(ii) Conventions ratified by Nigeria
(iii) Other international instruments

10.0. Introduction
The Nigerian Constitution being the grundnorm\textsuperscript{722} recognizes the importance of international treaties. No country can operate in isolation. Nations are bound to have interactions as a result of international trade, joining forces together for peaceful co-existence and international relations. The Nigerian Constitution appreciates the need for Nigeria to join international organizations\textsuperscript{723} such as the United Nations, African Union, Economic Community of West African States (ECOWAS) World Health Organization; International Labour Organization (ILO) amongst other international bodies. These bodies do gather to make international laws known as conventions or treaties: sometimes, they give directives such as protocols and declarations.

Nigeria is a member of many international organizations. These include the United Nations (UN), International Labour Organization (ILO) which was founded in 1919 as an agency of the United Nations\textsuperscript{724}, the African Union\textsuperscript{725}. This chapter

\textsuperscript{722} The basic norm or rule that forms the foundation of other laws
\textsuperscript{723} See section 12 of the Constitution of the Federal Republic of Nigeria which provides that ‘No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
\textsuperscript{724} Nigeria joined the United Nations on October 7, 1960; membership of ILO to UN members is not automatic. UN members must apply to become ILO members
\textsuperscript{725} Formerly known as Organization of African Union: Instrument such as the African Charter on Human and Peoples’ right are vital international instrument that regulate employment relations. The African charter has been enacted as part of Nigeria municipal law in accordance with section 12 (1) of the Nigerian Constitution, 1999 as altered.
shall examine some of the International instruments vis-à-vis their relevance to employment relations.

The International Labour Organization (ILO) is the body responsible for the regulating and setting of International standards for employment/labour relations world-wide. The body (ILO) works at achieving social equality, fairness in labour practice and justice through the instrumentality of setting standards, implementing the standards and supervising its enforcement among member-states. Thus, it can be argued that achieving international labour standard is one of the ILO primary goals.

The International Labour Organization (ILO) has been actively involved in seeking to achieve improved working conditions by regulating hours of work, preventing unemployment, protecting welfare of workers against hazards, diseases, sickness, discrimination; unfair labour practices and injuries etc that may arise in the course of employment.

International Labour Organization is a unique organization founded on a tripartite structure involving government, employers and workers. Conventions or/recommendations are products of deliberation at International conferences of the ILO or other International bodies. These conventions and recommendations constitute international labour standards. Thus, an international labour standard or best practice will promote decent work environment, freedom of association, respect for human dignity, absence of discrimination, equality of employment opportunities for men and women among other things.

10.1. APPLICATION OF INTERNATIONAL TREATIES IN NIGERIA

726 See Convention 100 of 1951 on Equal remuneration
727 See Agomo C.K. op.cit
728 See Convention 87 & 98 on freedom of Association and Protection of the Right to Organize of 1948 and Right to organize and collective bargaining 1949 respectively.
In Nigeria before any international treaty will have the force of law, such treaty must have been ratified and domesticated\textsuperscript{730}. This process is otherwise known as dualism\textsuperscript{731}. The legal effect of this is that, treaties once ratified, cannot be enforced directly as a local law until such treaty is enacted into law as an Act of the National Assembly\textsuperscript{732}. However, the Third Alteration Act, 2010 which altered the Constitution\textsuperscript{733} has changed the law on the application of International treaties already ratified by Nigeria as far as employment matters are concerned.\textsuperscript{734} The National Industrial Court has been given the power or jurisdiction to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol whether Nigeria ratified it or not.\textsuperscript{735}

The applicability of the ILO standards in Nigeria and every other member state is a matter of obligations of all member states.\textsuperscript{736} The ILO Constitution makes it clear in its provisions that, the member states should undertake that, they will within the period of one year at most from close of session of conference, bring the convention before the authority or authorities within whose competence the matter lies for domestication or enactment into municipal law\textsuperscript{737}. It is submitted, member states including Nigeria have not been living up to expectations as far as this directives are concerned.

10.2. CONVENTIONS RATIFIED BY NIGERIA

\textsuperscript{730} See section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 as altered.
\textsuperscript{731} Dualism approach has two steps; the first being that the treaty must have been ratified; the second is that the National Assembly must enact the ratified treaty into law thus, making it the Act of the National Assembly. The African Charter on Human and Peoples’ Rights have passed through the process.
\textsuperscript{733} Constitution of the Federal Republic of Nigeria, 1999 as altered, see section 254C (2)
\textsuperscript{734} See chapter Eight under the National Industrial Court of Nigeria
\textsuperscript{735} Section 6 of the 3\textsuperscript{rd} Alteration Act, 2010 of the Constitution of the Federal Republic of Nigeria, altering S. 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999
\textsuperscript{736} See Article 19 of the ILO Constitution.
\textsuperscript{737} See Article 19 (5), (6) and (7) of the ILO Constitution. See also Art 26 of the Vienna convention on the law of Treatises which states that every treaty in force is binding upon the parties and it must be performed by them in good faith, UN Treaty Series Vol. 1155, p.331.
Nigeria being a member of the International Labour Organization (ILO) has ratified thirty-eight (38) conventions out of all ILO conventions. It has been noted that, out of these conventions, only seventeen (17) are up to date others have elapsed and outlived their purposes waiting to be revised. Abugu has rightly observed that, out of the International Labour Organization Conventions eight (8) are fundamental. The implication of being fundamental is that, all member-states of the ILO are under obligation to respect the principles contained in the instrument. The fundamental conventions are:

(i) C.29 Forced Labour Convention 1930
(iii) C.98 Right to organize and collective bargaining, 1949.
(iv) C.100 Equal Remuneration Convention, 1951.
(vii) C.138 Minimum Age Convention, 1973

The eight principal and fundamental conventions which Nigeria has ratified shall be examined vis-à-vis their principles and objectives and the extent to which Nigeria has been applying them.

10.2.1. CONVENTION 29(C29) FORCED LABOUR CONVENTION, 1930
This convention was adopted on the 28th day of June, 1930 of the 14th session of the ILO Conference in Geneva and it came into Force on the 1st day of May, 1932. The subject matter of the convention is Forced or Compulsory Labour. Article 3(1) of the convention defines forced or compulsory labour as:

“all work or service which is extracted from any person under the
menace of a penalty and for which the said person has not offered himself voluntarily.”

The convention excludes certain types of labour such as: work of a purely military character exacted in virtue of compulsory military service, any work or service which forms parts of the normal civic obligation of the citizens of a fully self-governing country, any work or service extracted from any person as a consequence of a convention in a Court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The exceptions to this provision are:

“any work or service extracted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services”.

Nigeria has codified these conventions into its constitution. Thus, the 1963, 1979 and 1999 Constitutions contained provision for fundamental right to dignity of human person742. In fact, the third aspect of section 34 of the Nigeria Constitution743 provides that:

“no person shall be required to perform forced or compulsory labour”.

742 See section 34 CFRN 1999, as altered.
743 Ibid
744 See section 34(1) CFRN, 1999 as altered
The exception to Article 2 of the convention has also been codified in the Constitution.

10.2.2. CONVENTION 87 (C87) FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE, 1948

This convention was adopted on the 9th day of July, 1948 at the 31st session of the ILO Conference in San Francisco; the subject-matter of the convention is Freedom of Association and Protection of Right to Organize. It came into force on the 4th day of July, 1950. Nigeria ratified the convention on the 17th day of October, 1960.

The convention provides that ‘workers and employers without distinction whatsoever have the right to establish and, subject to the rule of the organization concerned, to join organizations of their own choosing without previous authorization; Workers and employers shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom to organize their administration and activities and to formulate their programmes.

This convention has been provided for in section 40 of the 1999 Constitution. Article 9 of this convention; specifically subjected the application of the convention to the Armed Forces and the Police to the provisions of the national law. The convention contemplates the hindrance that may occur as a result of national laws as it relates to Armed Forces and the Police. Thus, its ratification does not affect any existing law, award, custom or agreement whereby members of the Armed Forces and the Police may enjoy any right guaranteed by the convention. Although, there is another convention on the right to organize, this convention urges member states to take all necessary and appropriate measures.

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745 See section 34(2) CFRN, 1999 as altered
746 See Article 2 of the convention
747 Article 3(1) of the convention
748 Note that section 11 of the Trade Union Act excludes the Armed forces, the Police and others from joining or forming trade unions although, the provision that excludes this categories of workers contradict the Constitution on the right to freedom of association.
749 See chapter three “The Concept of Labour Rights”
750 See Article 9(2) of the convention
measures to ensure that workers and employers may exercise freely the right to organize.  

10.2.3. CONVENTION 98 (C98) RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING, 1949

This convention was adopted on the 1st day of July, 1949 at the 32nd session of the ILO conference in Geneva. The subject-matter of the convention is Freedom of Association, Collective Bargaining and Industrial Relation. It came into force on the 18th day of July, 1951.

The convention provides for adequate protection against discrimination in workplaces based on unionism or union activities. Every worker shall enjoy the right to freedom of association and collective bargaining. No worker shall be subjected to any condition in the enjoyment of his or her right to join a union or be forced to relinquish trade union membership. Every worker is equally protected from being dismissed for being a member of a trade union or because of the worker’s participation in union activity, outside working hours or, with the consent of the employer, within working hours. The convention further provides for collective bargaining. Article 4 of the convention provides:

“measures appropriate to national condition shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organization and workers’ organizations with a view to the regulation of the terms and conditions of employment by means of collective agreements”

The extent to which the convention shall apply is at the instance of member states, national laws. Nations that have ratified the convention are at liberty to

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751 See Article 11 of the convention and the Nigeria Trade Union Act, 1976 and the Trade Union Amendment Act, 2005 on the right to organize  
752 Article 1 of the convention  
753 See Article 1(2) (a) of the convention  
754 See Article 1(2) (b)  
755 C98 of 1949  
756 See Article 5 of the Convention
denounce it.\textsuperscript{757} Nigeria has complied with the Convention, to some extent, with the passage of the Trade Union Amendment Act, 2005 and more importantly, section 40 of the Constitution of the Federal Republic of Nigeria, 1999 as altered which guarantees freedom of association.

10.2.4 CONVENTION 100(C100) EQUAL REMUNERATION 1951
This convention was adopted on the 29\textsuperscript{th} day of June, 1951, at the 34th session of the ILO conference in Geneva; the subject matter of the convention is Equal Value. It came into force on the 23\textsuperscript{rd} day of May, 1953. Nigeria ratified the convention on the 8\textsuperscript{th} day of May, 1974.

The Convention defines “remuneration” to include the ordinary basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or kind, by the employer to the worker and arising out of the worker’s employment.\textsuperscript{758} The term: ‘equal remuneration for men and women for work of equal value refers to rates of remuneration established without discrimination based on sex’.

The Convention enjoins each member state to use means appropriate to the methods in operation for determining rates or remuneration, promote and in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.\textsuperscript{759} This principle may be applied by means of national laws or regulations, legally established or recognized machine for wage determination, collective agreements between employers and workers of a combination of these various means.\textsuperscript{760} Each member state shall co-operate as appropriate with the employers’ and workers’ organizations concerned for the purpose of giving effort to the provision of the convention.\textsuperscript{761}

It may be argued to some extent that, Nigeria has not complied with the convention. It is submitted, until the National Assembly passes an Act like the U.K’s Equal Pay Act and the United States of America’s title VII of the Civil Rights

\textsuperscript{757} Article 11 of the Convention
\textsuperscript{758} See Article 1(a) of the Convention
\textsuperscript{759} See Article 2(1) of the convention
\textsuperscript{760} See Article 2(2) of the convention
\textsuperscript{761} See Article 4 of the convention
Act, 1964, it appears, the application of the convention may be more honoured in theoretical framework than its practical application. Unemployment as a menacing factor to employee’s bargaining power may account for different pay to employees engaged to do work/job of equal value; but getting different remuneration as in expatriate against a Nigerian, or permanent staff against a casual employee.\(^\text{762}\)

10.2.5 CONVENTION 105 (C105) ABOLITION OF FORCED LABOUR CONVENTION, 1957

This convention was adopted on the 25\(^\text{th}\) day of June, 1957 of the 40\(^\text{th}\) session of the International Labour Organization Conference in Geneva. The subject matter is Forced labour. It came into force on the 17\(^\text{th}\) day of January, 1957. Nigeria ratified it on the 17\(^\text{th}\) day of October, 1960.

C29 of 1930 has defined what constitutes ‘forced labour’. However, C105 enjoins all state to suppress and not to make use of any form of forced or compulsory labour; as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development, as a means of labour discipline as a punishment for having participated in strikes; as a means of racial social, national or religious discrimination\(^\text{763}\).

The Convention enjoins each member state that ratified the convention to see to the abolition of forced or compulsory labour\(^\text{764}\).

10.2.6 CONVENTION 111(C111) DISCRIMINATION (EMPLOYMENT AND OCCUPATION) 1958

This convention was adopted on the 25\(^\text{th}\) day of June, 1958 of the 42\(^\text{nd}\) session of the International Labour Organization Conference in Geneva. The subject matter is Equality of Opportunity and Treatment. It came into force on the 15\(^\text{th}\) day of June, 1960. Nigeria ratified it on the 2\(^\text{nd}\) day of October, 2002.


\(^{763}\) See Article 1 (a)-(e) of the C105. See also 34 of the CFRN, 1999 as altered.

\(^{764}\) See Article 4 of the convention; see also section 34(2) CFRN, 1999 as altered.
Before the Convention was ratified by Nigeria, right from discrimination has been part of the Nigerian fundamental right protected by the constitution from the Republican Constitution of 1963; it was also provided for under the 1979 constitution and the current Constitution of the Federal Republic of Nigeria, 1999 as altered.\(^{765}\)

The Convention defines the term “discrimination” to include: any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member concerned after consultation with representative employers’ and workers’ organizations, where such exists and with other appropriate bodies. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be discrimination: For the purpose of this Convention the term employment and occupation include access to vocational training, access to employment and to particular occupations, and the terms and conditions of employment.\(^{766}\)

Of importance is Article 2 of the convention which prescribes the scope of the term discrimination not to include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements. Thus, any job applicant who is refused employment based on his/her ineligibility as it relates to skill, qualification or aptitude test cannot complain of discriminatory selection.\(^{767}\)

**10.2.7. CONVENTION (C138) MINIMUM AGE CONVENTION, 1973**

This convention was adopted on the 26\(^{th}\) day of June, 1973 at the International Labour Organization Conference in Geneva; the subject matter is Elimination of child labour and protection of Children and Young persons. It came into force on the 19\(^{th}\) day of June, 1976. Nigeria ratified the convention on the 2\(^{nd}\) day of October, 2002.

\(^{765}\)See section 42 CFRN, 1999 as altered

\(^{766}\)See Article 1(a) & (b) of the C111, 1958

\(^{767}\)See Article 1(2) of the C111, 1958
The convention enjoins member states to undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Each member is to make a declaration as to a minimum age for admission to employment or work within its territory and on means of transport registered in its territory. However, the convention puts the least minimum age at fifteen (15) years which is presumed to be the age of completion of compulsory schooling.

The convention considers an unfriendly economic situation that may warrant a nation reducing age to fourteen (14). The reason for reducing the age to 14 must be given in a report on the application of the convention which must be submitted to the ILO pursuant to Article 22 of the Constitution of the International Labour Organization (ILO).

10.2.8 CONVENTION155 (C155) OCCUPATIONAL SAFETY AND HEALTH CONVENTION, 1981
This convention was adopted on the 22nd of June, 1981 at the International Labour Organization Conference in Geneva; the subject matter is Occupational Safety and Health. It came into force on the 11th day of August, 1983. Nigeria ratified the Convention on the 3rd day of May, 1994.

The convention applies to all branches of economic activity. However, some branches of the economic activities may be excluded; however, that may be after consultation at the earliest possible stage with the representative organization of employers and workers concerned that the whole or part of that particular branch of economic activity such as maritime shipping or fishing, in respect of which special problems of substantial nature may arise, can be excluded from the

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768 Article 1 of the convention
769 Article 2(1) of the Convention. This means that, a minimum age in Nation A may be different from that of Nation B. It is a function of what is declared as the minimum age.
770 See Article 2(3) of the convention
771 See Article 2(4) of the C138, 1973
772 See Article 2(5) (a) & (b) of the C138, 1973.
773 Article 1(1) of the C155 1981
economic activity in which the Convention shall apply. It is also provided that, such exclusion must be reported to the ILO pursuant to Article 22 of the ILO Constitution.

The Convention defines branches of economic activity to cover all branches in which workers are employed, including the public service workers and all employed persons including public employees; workplace covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer, the term health in relation to work, indicates not merely the absence of disease or infirmity, it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work, so far as reasonably practicable, the causes of hazards inherent in the working environment.

The policy shall take account of the under-listed main spheres of action in so far as they affect occupational safety and health and the working environment:

a. Design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes);
b. Relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers;
c. Training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;
d. Communication and co-operation at the levels up to and including the national level;

774 See Article 1(2) of the Convention
775 Article 1 (3) of the Convention
776 Article 3 (a, b, c & e)
777 See Article 4(2) of the Convention
e. The protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

10.2.9. Convention 32 (C32) Protections against Accidents (Dockers) Convention (Revised)

This convention was adopted on the 27th day of April, 1932 at the 16th session of the International Labour Organization Conference in Geneva. The subject matter is Dockworkers. It came into force on the 30th day of October, 1934. Nigeria ratified the Convention on the 16th day of June, 1961. However, the convention is now outdated. It was revised by convention 152. Thus, convention 32 is no longer open to ratification.

The aims of the convention include provision of safety for workers, proper maintenance of all docks, wharfs, quay, or similar premises which workers use for going to and from their workplaces. It is mandatory to light the shores and any dangerous breaks, corners and edges shall be adequately fenced to a height of not less than 2 feet 6 inches (75cm).

Article 3 provides for safe means of access to a quay, and such means of access shall be where practicable, the ship’s accommodation ladder, a gangway or a similar construction778.

Article 9 provides for appropriate measures to be prescribed to ensure that no hoisting machine gear, whether fixed or loose, used in connection therewith, is employed in the processes on shore or on boardship unless it is in safe working condition779.

Article 12 of the convention provides that National laws or regulations shall prescribe precautions as may be deemed necessary to ensure proper protection of the workers, having regard to the circumstances of each case, when they have to deal with or work in proximity to goods which are in themselves, dangerous to

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778 See Article 3 of the C32 of 1932
779 See Article 9 of the C32 of 1932
life or health by reason either of their inherent nature of their condition of the
time or work where such goods have been stowed\textsuperscript{780}.

Thus, with the alteration\textsuperscript{781} to the Constitution of the Federal Republic of Nigeria (1999), the NIC has jurisdiction to entertain matters that bother on international conventions whether or not that law has been domesticated. Ratification of such international treaty is the only condition required\textsuperscript{782}.

**10.2.10 Convention 174 (C174) Prevention of Major Industrial Accident Convention 1993**

This convention was adopted on the 26\textsuperscript{th} day of June, 1993 at the 80\textsuperscript{th} session of the International Labour Organization Conference in Geneva. The subject matter is occupational safety. It came into force on the 3\textsuperscript{rd} day of January, 1997.

The purpose of this convention is to provide for ways in which appropriate measures will be taken to prevent major accidents and also minimize the risk of major accidents and its effects. According to this convention, the responsibility of identifying major hazard installations is now that of the employer. Whenever a major accident occurs, the employer is duty bound to inform such competent authority of the accident.

Again, Article 9 provides that employer shall establish and maintain a documented system of major hazard control. Article 10 provides that employers shall prepare a safety report based on the requirements of Article 9\textsuperscript{783}. The report shall be prepared in case of existing major hazard installations, within a period after notification prescribed by national laws and regulation\textsuperscript{784}.

It is doubtful whether Nigeria has ratified this convention. Specifically, the Labour Standards Bill and Executive Legislative Bill, first presented to the National Assembly under Obasanjo’s presidency are yet to be passed into law. Thus, the selective approach of Nigeria to the adoption of international conventions that

\textsuperscript{780} See Article 12 of the C32 of 1932  
\textsuperscript{781} See Third Alteration Act, 2010  
\textsuperscript{782} See section 254C (2) of the CFRN, 1999 as altered  
\textsuperscript{783} See Article 9 of the C174, 1993  
\textsuperscript{784} See Article 10 of the C174, 1993
bother on international best practices shows lack of political will to develop and reform our labour laws and practices.

10.2.11 Convention 182 (C182) Elimination of the Worst Forms Of Child Labour, 1999

This convention was adopted on the 17th day of June, 1999 at the 87th session of the International Labour Organization Conference in Geneva. The subject matter of the convention is Elimination of child labour and protection of children and young persons. It came into force on the 19th day of November, 2000. Nigeria ratified the Convention on the 2nd day of October, 2002. It is one of the fundamental conventions of the ILO.

A child is considered to include all persons under the age of 18 years. It further states the worst forms of child labour to include:

(a) All forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.\(^{785}\)

(b) The use, procuring or offering of a child for prostitution, for the production of pornography for pornographic performance.\(^{786}\)

(c) The use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties.\(^{787}\)

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.\(^{788}\)

It is mandatory for each state that ratifies the conventions to take immediate and effective measures to secure the prohibitions and elimination of the worst form of child labour as a matter of urgency.\(^{789}\) The types of work described under Article 3(d) of the convention shall be determined by the national laws or regulations or by competent authority of each state that ratifies the convention after consultation with the organizations of employers and workers concerned

\(^{785}\) Article 3(a) of the C182, 1999
\(^{786}\) Article 3(b) of the C182, 1999
\(^{787}\) Article 3(c) of the C182, 1999
\(^{788}\) Article 3(d) of the C182, 1999
\(^{789}\) Article 1 of the convention
taking into consideration relevant International Standards\textsuperscript{790}. Education is seen as a powerful tool in eliminating child labour; thus each state that ratifies the convention must ensure that children have access to free basic education, and, wherever possible and appropriate, vocational training for all children removed from the worst forms of child labour\textsuperscript{791}.

10.3 OTHER INTERNATIONAL INSTRUMENTS

10.3.1 Universal Declaration of Human Rights (UDHR), 1948

The United Nations General Assembly adopted this instrument on the 10\textsuperscript{th} day of December, 1948 and proclaimed it as Universal Declaration of Human Rights. The instrument recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family, as the foundation of freedom, justice and peace in the world\textsuperscript{792}. Nigeria ratified the instrument immediately after independence.

There are salient provisions of the instrument which protect labour rights generally. Article 4 of the instrument prohibits slavery and servitudes Article 22 provides for right to social security. Article 23(1) provides for right to work and free choice of employment; Article 23(2) guarantees every worker’s right to equal pay for equal work; worthy of note is the provision for just and favourable remuneration ensuring an existence worthy of human dignity\textsuperscript{793}. Employers’ and workers’ rights to form and join trade unions are guaranteed by the instrument\textsuperscript{794}.

It must be further clarified that, the right to rest and leisure, limitation of working hours and periodic holidays with pay is provided for, in the instrument\textsuperscript{795}. Among other things that are covered by the provisions of the instrument are right to non-discrimination\textsuperscript{796}; right to an effective remedy by the competent national tribunals for acts violating the fundamental rights of every person\textsuperscript{797}.

\textsuperscript{790}See Article 4 of the convention
\textsuperscript{791}See Article 7(a)-(e) of the C182, 1999
\textsuperscript{792}See the preamble to the UDHR, 1948
\textsuperscript{793}See Article 23(3) of the instrument
\textsuperscript{794}See Article23(4)
\textsuperscript{795}Article 24 to the UDHR, 1948
\textsuperscript{796}Article 21 to the UDHR, 1948
\textsuperscript{797}Article 8 of the instrument
10.3.2. International Covenant on Civil and Political Rights (ICCPR)

This instrument also contains provisions that are related to labour and social protection. It provides against slavery, servitude and forced labour,798 right to form and join trade unions.799 General principles of equality is provided for in the instrument. Thus, men and women are equal as far as labour benefits are concerned800. The general principle of equality under Article 26 of the instrument covers cases of discrimination in the work place or discriminatory recruitment. Every person in a ratified nation has right to effective remedy when the rights are infringed801.

10.3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

This instrument provides for right to work and freedom of employment.802 It further guarantees right to just and favourable conditions of work including pay for work of equal value wages allowing a decent living safe and healthy working conditions, rest, leisure, limitation of working hours, periodic holidays with pay803.

Other rights that are provided for in the International Covenant on Economic, Social and Cultural Rights include freedom of association and right to strike,804 right to social security and social insurance,805 protection of family and maternity benefits,806 and right to health.807

10.3.4 African Charter on Human and Peoples’ Rights (ACHPR)

The African Charter on Human and Peoples Right (ACHPR) came into being after the General Assembly of the Organization of African Unity (now African Union) met in 1979 and adopted a resolution for a committee to be set-up to draft an instrument on human rights with principles that resemble the already adopted

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798 See Article 8(3) of the instrument
799 Article 22
800 See Article 26. However some special labour benefits may not be enjoyed by both men and women for differential factors. These include maternity leave, exclusion of women from underground works etc.
801 See Article 2(3) (b) of the ICCPR
802 Article 6, International Convention on Economic Social and Cultural Rights (ICESCR)
803 See Article 7 of the ICESCR
804 Article 8 of the ICESCR
805 Article 9 of the ICESCR
806 Article 10 of the ICESCR
807 Article 12 of the ICESCR
human rights instruments in Europe and America. The charter was later adopted in 1981 and came into force on 21st day of October 1986. Nigeria ratified the charter on the 22nd day of July, 1983.

The Charter is primarily adopted for the promotion and protection of human rights in all the countries in the then Organization of African Unity. Almost all African countries here ratified the instrument except few which include South Sudan, Morocco etc.

The Charter protects labour rights. Article 15 of the African charter provides that, every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work808. The instrument also provides for the right of workers to form or join trade unions of their choosing809.

The African Charter on Human and peoples’ right mandates the member states to recognize the rights, duties and freedom enshrined in the charter. Each member state is to adopt legislative or other measures to give effect to the provisions of the Charter.810

It is concluded that, even if right to work, right to strike, right to collective bargaining and many more rights are not expressly provided for by the chapter IV of the Nigerian Constitution, it is logically legal that these rights are enforceable when international instruments already ratified by Nigeria are cited, relied on and sought to be enforced by the National Industrial Court. It is the view of this commissioned Author that, the provisions of these international instruments and the rights contained therein shall be enforced successfully.811

**SUMMARY**

This chapter examined important ILO Conventions which has been ratified by Nigeria; and other global (United Nation or any of its agencies) and regional (African Union) international instruments that were equally ratified by Nigeria.

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808 See article 15 of the ACHPR, 1981  
809 See Article 10 of the ACHPR, 1981  
810 See Article 1 of the ACHPR, 1981  
811 This position is supported by section 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999 as altered which is an improvement cum alteration introduced by the Third Alteration Act, 2010. Read chapter three and eight of this book for detailed clarifications on the concept of Labour rights and the power of the National Industrial Court, respectively.
The extent to which Nigeria has complied with the ratified treaties and conventions were also discussed.

**REVIEW QUESTIONS**

1. Discuss the application of ILO Convention on right to dignity of human person under the Nigerian Constitution.


3. There exists nexus between human right and employment rights. Discuss this assertion using relevant ILO conventions.

4. Freedom of Association of both the employers and employees is guaranteed under the Nigeria Constitution and ILO Conventions. Discuss.