APPRASIAL OF EMPLOYERS' LIABILITY FOR INJURIES RESULTING FROM BREACH OF NIGERIAN INDUSTRIAL SAFETY LAWS

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A DISSERTATION SUBMITTED TO THE

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SUPERVISOR: DR.CHRIS U. ANYANWU.

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CERTIFICATION

This is to certify that this research work was carried out by Ekwelem, Chinwe Martha, a postgraduate student in the Department of Commercial and Property Law with Registration Number PG/LL.M/08/53503, for the award of Master of Laws Degree.

This work is original and has not been submitted in part or in full for the award of any degree in this or any other institution.

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To my mum and siblings, may the good Lord bless and reward you abundantly. More so, I will not forget my late dad who assisted me by providing some of the materials I used in this work but could not live to see the certificate. I know you are resting in the bosom of Lord Jesus Christ and in all things, I thank God for the fortitude He gives us to bear your loss.

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CCHCJ	-	Cyclostyled Copies of High Court Judgement
CRIM LR	-	Criminal Law Review
ENLR	-	Eastern Nigeria Law Report
EWCA	-	England and Wales Court of Appeal
EXD	-	Exchequer Division
F & F	-	Foster & Finlasonôs Report
FLR	-	Federal Law Reports
FRCR	-	Federal Revenue Court Law Reports
H & N	-	Hurlstone & Normanôs Reports
HSC	-	Health and Safety Commission
HSWA	-	Health Safety and Work Act
HSE	-	Health and Safety Executive
ICR	-	Industrial Cases Reports
ILO	-	International Labour Organisation
IRLR	-	Industrial Relations Law Reports
KB	-	Kings Bench
LLR	-	Lagos Law Report
LR	-	Law Reports
LFN	-	Laws of Federation of Nigeria
M & W	-	Meeson & Welebyôs Report
NCLR	-	Nigerian Constitutional Law Report
NMLR	-	Nigerian Monthly Law Report
NLLR	-	Nigerian Labour Law Report
NSCC	-	Nigerian Supreme Court Cases

OSHA	-	Occupational Safety and Health Act
POPA	-	Public Officers Protection Act
QB	-	Queens Bench Division
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SCC	-	Supreme Court Cases
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WLR	-	Weekly Law Report
WNLR	-	Western Nigerian Law Reports

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Abstract

Safety is one of the most important needs of man today. Safety at workplace on the other hand is paramount and cannot in any way be ignored. Many vibrant and resourceful person have lost their precious lives and some have suffered permanent and temporal incapacities just because safety measures were not put in place. The June 3rd 2012 ill-fated Dana Airline crash in Lagos which claimed a lot of lives and the recent crashes that could have been averted if the aviation sector had taken the required safety measures. No matter the monetary compensation that the country and or the airlines pay, it is nothing to be compared to the emotional trauma the incident had caused. More so, in other industries, people are dying daily all because of absence or inadequate safety measures in place. It is therefore very expedient to pursue industrial safety with all vigor to avoid the drastic waste of human resources in our industries. Employers should come to terms with the provisions of the law and know their liabilities. When industrial safety is breached, employees should know their rights to safety at workplaces, how to seek redress where their rights are breached and the compensation due to them as provided by the law. All these necessitated the title of this discourse thus ñApprasial of Employersô Liabilities for Injuries Resulting from Breach of Nigerian Industrial Safety lawsò. The study adopted descriptive and explanatory designs and found that industrial safety laws in Nigeria are not adequate to meet up with the contemporary industrial safety demands. Employers capitalize on that and neglect this all important aspect of industrial life. Poverty, ignorance unemployment to mention a few worsen the already decrepit situation and thereby subject the work force into the pit of desolation. Proactive and preventive measures should be put in place as it remains the best strategy to overcoming industrial injuries. Chapter one is a background and general introduction on the topic, a literature review and other preliminaries on the topic. Chapter two traces the history of industrial safety from the common law era till date in Nigeria and other jurisdictions. Chapter three discusses the liabilities of the employers as provided in the laws. Chapter four provides the remedy which is compensation for breach of industrial safety laws as provided by the Employees Compensation Act 2010 and Workmen Compensation Act, Cap. W6, LFN, 2004. Chapter five x-trays the enforcement of the rights of the employee and also considers the exclusion of the rights of an employee to industrial safety. The study ends with recommendations and conclusion.

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CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

Across all sectors of the economy, workers are sometimes, if not often involved in industrial accidents. Such accidents range from minor to fatal leading to the loss of life and limb. Industrial accidents are traceable to the period of Industrial Revolution which was the transition to new manufacturing processes from 1760 to sometime between 1820 and 1840 in England. During this period, crude machinery invented was used in industrial production.

Over the centuries machinery for the production of goods and services has improved tremendously but such improved machinery brought with it its own hazards to industrial safety. Stake holders in developed countries improve in their knowledge and skills to keep abreast with the rapid development while their counterparts in the developing countries seem to advance slowly in this regard, this may be as a result of the sociological and socioeconomic factors.

In Nigeria for instance, some workers as a result of unemployment and poverty do all manner of work to earn a living without considering the nature of the job and or the workplace environment which may pose some health challenges to them.

Employers are legally under a duty to see to the safety of their employees. Thus the English Court in the case of *Wilsons & Clyde Coal & Co Ltd v English* held that there are three main duties of an employer to the employee; provision of competent staff, adequate plant and safe system of work[1]. However, employers tend to prefer the maximization of profits to the safety of the employees. This seems to be the reason why industrial safety is treated with much levity by Nigerian employers.

For example the fire incident that razed a plastic factory in Ikorodu, Lagos in 2002 when many workers were roasted to death at night because the Chinese owners of the company locked the workers in the factory and went to sleep at their secured resident guarded by

[1] (1937) 3 All ER 628.

policemen. Although members of the National Assembly and officials of the Federal Ministry of Labour visited the factory, yet the employers seem not to be held liable for the abrupt death of their employees as nothing seems to have been done to the employers[2].

On the 27th of April, 2015 101.9FM radio Station was bombed and about four media practitioners on their legitimate duties died in the blast.[3] Yes, one would say it was a work place accident, but would it not have been avoided if adequate safety measures were put in place?

More recently, Yomi Olomofe of Prime Magazine was attacked and thoroughly battered at the office of the Nigerian Customs& Excise at the Nigerian- Benin border in Seme where he was investigating a matter[4].

These are a few of the several deaths and accidents that occur always in the various industries in Nigeria and beyond and in most cases little or no compensation is paid to the victims or their dependants. The issue of safety in Nigerian industries should be of paramount importance and industrial safety machines should keep abreast with the changing technological means of production of goods and services. In turn this should lead to improvement of working conditions and safe place of work.

Industrial safety can be achieved through concerted efforts of the employers and employees enabled by relevant legislation. In this regard the government enacts enabling law on safety to be enforced by relevant government agencies. Accordingly, this would make the employees adhere to the rules of industrial safety while working for optimal productivity. Employers should come to terms to this very important issue of industrial safety, knowing their liabilities when they are in breach. Employees should also imbibe the properly managed safety culture based on tested principles of workplace or industrial

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[2] Oyesola B." Safety at Work Nigerian workers,the Endangered Specie" January, 2011. www.nigerianbestforum.com/.../safety/.../safety -at-work-nigerian-workers-theendangered species.(accessed 27 September,2016).

[3] Audu O.,"Blast at Radio Station Kills Many" *Premium Times*,(Abuja,27) June,2015.www.premiumtimesng.com/news/topnew/182171(accessed 15/06/15).

[4] Igomu Tessy"Hunted and Killed for Journalim's Sake"Daily Sun(29th August,2016) Lagos .38.

safety. This will lead to developing effective control measures and feeling a sense of responsibility for their safety and of others.

According to Fajana in his paper ñSafety at Work: Issues and Challenges. ñAccepting safety as a responsibility demonstrates a sincere concern for each employee, which establishes the foundation for an effective culture[5]ò. This research is titled, ñAppraisal of Employersô Liability for Injuries Resulting from Breach of Nigerian Industrial Safety Lawsò. It also goes ahead to discuss compensation and enforceability of the rights of the employees when these laws are breached.

1.2 Statement of the Problem

The inadequacy of industrial safety measures has really endangered the Nigerian employees and their counterpartsô worldwide. This research wishes to expose the employersô liabilities thus the rights of the employees as provided in the Nigerian labour laws and in other jurisdictions. This will go a long way to reawakening the consciousness of the employees rights and intimate them on how and where to seek redress when their rights are breached.

1.3 Research Questions

The study will answer three questions:

1. To what extent are employers in Nigeria liable for workplace injuries of their employees as provided under the Nigerian labour laws?
2. Do the present industrial safety laws fully protect the contemporary Nigerian employees from workplace injuries and what is the degree of their enforceability?
3. Are there any possibilities of improving the health of Nigerian workers and or eradicating industrial injuries in the work place environment?

1.4 Objectives of the Study

The objectives of the research are:

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[5] Fajana O., "Safety at Work: Issues and Challenges cited in Ogunmosinle S." Purging Nigeria of Apathy towards Safety"in http://www.pmnewsNigeria.com/201/03/13-purging -nigeria-of-apathy-towards safety practices-sol [.Accessed 27 September,2016.]

1. To determine the extent of the liability of Nigerian employers as provided under the Nigerian laws.
2. To evaluate the present Nigerian industrial safety laws and determine their protective and compensatory capacity to the contemporary employees.
3. To consider the possibility of reducing or eradicating industrial injuries at work place and make recommendations on how to improve industrial safety standards in Nigeria.

1.5 Methodology

The study adopts the descriptive and explanatory designs in the examination of the employerôs liability for injuries resulting from breach of Nigerian industrial safety laws. The research will also consider the compensation of the employees when these laws are breached and the degree of their enforceability. Reliance will be placed on primary source of data which include status and case law. Also secondary source of data will be placed on textbooks, journals, newspapers, internet and so on. No part of it will be empirical but just analytical.

1.6 Scope of Study

The scope covers the employerôs liability both at common law and up to the present day labour legislation on industrial safety. Comparing such with what obtains in some other select jurisdictions. The research will also consider the defences of the employers in breach of industrial safety laws and employees rights to compensation for injuries suffered as a result of such industrial safety breaches.

1.7 Organization of the Study

The study will be covered in six chapters, chapter one introduces the entire work with a background and general introduction on the topics a literature review and other preliminaries on the topic. Chapter two traces the history of industrial safety from common law era till date in Nigeria and other jurisdictions. Chapter three discuses remedy for breach of industrial safety laws. The remedy is compensation as provided by the employees Compensation Act 2010 and Workmen Compensation Cap W6 LFN 2004. Chapter five examines the enforcement of the rights of the employee and also considers

the exclusion of the rights of an employee to industrial safety. The employee and also considers the exclusion of the rights of an employee to industrial safety. The research ends with findings, recommendations and conclusion.

1.8 Literature Review

Industrial safety in Nigeria seems to be a developing phenomenon. This could be the reason for the dearth of local works on the subject. The opposite seems to be the case in the Western countries or other jurisdictions where industrial safety has developed so much that labour law and employment law authors have lots of works on the subject. That notwithstanding, there seem not to be works on employersô liability for injuries resulting from breach of industrial safety. However, some literary works were referred to in the course of this research and there are hereunder briefly reviewed.

Cotter B. et al in ó*Munkman on Employers Liability'* sees employersô liabilities as the duties owed by employers to workers to take care to prevent personal injury (accident, injury and ill health) to the latter arising in or out of their work[6]. The book also traced the history of industrial safety in European countries till date .It equally deals in passing with health and safety duties to people affected not as workers but as members of the general public e.g. local inhabitants, consumers, road users and so on.

Singh discusses the origin of industrial safety in Indian. According to the author, industrial safety came about as a result of the changes in the environment including the sophistication of machines and this led to insecurity at work places. This book also highlights the effective management of safety measures to optimize performance.[7]

Jeremy Stranks: sees health and safety as a duty of employers to their staff. This duty enables managers to comply with the law and draw up health and safety procedure for their workplace.[8] Pradeep Chaturvedi, an Indian author in his book, discusses safety in

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[6]Cotter B. et al, *Munkman on Employer's Liability* 14th ed., (London: Lexis Nexis,2008).
[7] Singh U.K., *Safety Security and Risk Management*, (New Delji: APH Publishing Company, 2009).
[8] Stranks J. , *The Health and safety Handbook (A Practical Guide to Health and Safety Law Management Policies and Procedures* (London: Kagan page Limited, (2006).

industries by using case studies analysis. According to him laws have been made but for the laws to be effective all the stakeholders should put hands together for its implementation. He holds the view that industrial injuries are avoidable if safety measures are sustained.[9]

R.K Jain & Sunil S. Rao see safety as a very important aspect of industrialization and by this should not in any way be neglected but rather full proof safety systems must be designed and incorporated and workers/people in general trained to ensure its maximum implementation. They further maintained that there are other two related aspects of safety ï health which they see as employees well-being and the environment.[10]

Deshmukh, discusses industrial safety management. He opines that industrial safety demands a critical and systematic assessment of the existing standard of safety achieved in the company with respect to the targeted goals to be achieved for the fulfillment of the system.[11] Lawrence Bamber et al discusses in an elaborate way, the issue of health and safety in industries. The authors are of the view that absence of management, occupational health support and reduction in the number of people on incapacity benefits are uniting management, trade union and Government in a new vision of health at workplace.[12] The wide range of subjects covered provides considerable detail on legal requirements, practical ways of achieving compliance in health and safety.

It seems that one common characteristic of the foreign or Indian authors is their in depth perception of industrial safety issues. This could be as a result of their social cultural ideology. They tend to understand the importance of their workforce in economic development and they canvass to their maximal welfare in the discussion of industrial safety.

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[9] P. Chaturvedi ,*Occupational Safety Health and Environment and Sustainable Economic Development and Sustainable Economic Development* (New Dehili: Concept Publishing Company, 2001).
[10] R.K. Jain. et al*, Industrial Safety, Health and Environment Management System* 2nd edition, (New Dehili: Khana publishers, 2010).
[11]L.M., Deshmukh , *, Industrials Safety Management Hazard Identification and Risk Control*, 4th Edition (New Deihi: Tata McGraw Hill Publishing Company Limited, 2009).
[12] L.Bamber et al, *Tolley's Health and Safety at Work Handbook* 23rd Edition, (London: Lexis Nexis, 2010).

Employers as elaborated in this research can be natural human person or a corporate entity. Even where an employer is a non human being, such an employer should promote industrial safety of its workers otherwise; it can be civilly or criminally responsible when there is breach of industrial safety laws. Thus Stephen Griffin sees a company as a legal entity but emphasizes the conceptual difficulties involved in seeking to impose liability on a company for a wrong which requires proof of a óguilty mindô.[13]

Michael Welham in his view holds that having safety management systems in place is no guarantee that criminal sanctions will not be imposed; however that the jury will take the degree of positive health and safety management into consideration when performing judicial functions.[14] While William Wilson opines that the liability of a corporate employer in criminal matters is not a case of vicarious liability but rather of direct liability, as the company is identified with its controlling officers. He further stated that in some cases the mens rea of an employee may be attributed to the employer with the principle of delegation.[15]

Linus Ali brings out the criminal liability of a corporation in Nigeria. The book establishes concrete conceptual and legal bases for corporate criminal liability in the country.[16] It is worthy to note that the liability of the employer does not automatically earn the employee his rights, but the enforceability of these rights poses a challenge in most cases. Adewumi et al, write about the state of workers in some of our industries. They discuss the important role of trade unions in ensuring that workers enforce their rights even in the midst of challenges. They urge every sector of the economy all and sundry to wake up to protect and enforce the rights of workers at work. [17]

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[13] S. Griffin, *Company Law Fundamental Principles* 4th Edition, (London: Pearson Education 2006)
[14] M. Welman, *Corporate Manslaughter and Corporate Homicide. A Managers Guide to legal compliance* 2nd Edition(London Tottel Publishers, 2008).
[15] W. Wilson, *Criminal Law Doctrine and Theory*. 2nd Edition, (United Kingdom: Pearson Education, 2003).
[16] L. Ali, *Corporate Criminal Liability in Nigeria*, (Surulere Lagos: Malthoute Press 2008).
[17] F. Adewuni et al, *The State of Workers Rights in Nigeria: An Examination of Banking Oil and Gas Telecommunication Sectors.* (Abuja: 2010).

Femi Falana discusses the enforcement of the fundamental rights as guaranteed in the constitution with reference to the situation in other jurisdiction.[18] Agomo Kanu Chioma. analyses the current developments in labour and employment laws. The book also discusses social security and occupational diseases. The author draws inference from relevant international labour standards as yardsticks for measuring the efficiency and decency of national laws and practice. The writer holds the view that Nigerian laws are yet to develop to meet up to the standard of their international counterparts. The writer shares this same view and is hopeful that with the development of our democracy the nation will realize its dream.[19]

Other Nigerian law authors in employment and labour laws whose works were consulted are: Akintunde Emiola in ôNigerian Law[20] who writes on the various labour law topics. He brings out the employers liabilities as provided by the Nigerian law. E.E. Uvieghara: brings out the injuries at work places and the Employersô duty to the Employee but does not cover the contemporary employee thus, there is need for a more comprehensive work on employersô liability.[21]

Bimbo Atilola discusses some of the protective legislation but opines that some of these laws are obsolete and do not meet up to the current standard as obtained in other countries. In his view which the researcher shares there is a great need to amend such laws to meet up with the current standard.[22] Ogunniyi writes on contemporary employment law topics. On the issue of health and safety, he opines inter alia that there is a need to more rigorously enforce the Factories Act and to strengthen the Ministry of Labour both in terms of machines and manpower to avoid the rampant disaster that occurs as a result of inadequate safety system.[23]

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[18] F. Falana*, Fundamental Rights Enforcement* (1st Edition, Ojodu Lagos: Legal Text Publishing Company 2004).
[19] C. Agomo, *Nigerian Employment and Labour Relations Law and Practice*. (Lagos: Concept Publications, 2011).
[20] A. Emiola, *Nigeria Labour Law*, (Ogbomoso Nigeria; 2000).
[21] E.E. Uniegbara*, Labour Law in Nigeria* (Ikega: Mlthouse Press 2001).
[22] B. Atiola, *Annotated Nigerian Labour Legislature* (Surulere Lagos: Hybrid Consult 2008).
[23] O. Ogunniyi, *Nigerian Labour and Employment Law* 2nd Edition, (Ikeja: Folio Publishers 2004).

1.9 Meaning of Industrial Safety

The Blacks Law Dictionary defines an industry as ña particular form or branch of productive labour, an aggregate of enterprises employing similar production and marketing facilities to produce items having markedly similar characteristicsò. The *Oxford Advanced Learners Dictionary of current English* defines an industry as the production of goods from raw material especially in factories: heavy/light industry,
(2) The people and activities involved in producing a particular thing or providing a particular service: the steel industry[24]ò

The word industrial is defined by the same dictionary as; ñconnected with industry: industrial conflict[25]é .ò On the other hand, safety is defined by the Oxford Advanced Learners Dictionary of Current English as ñthe state of being safe and protected from danger or harmé . The Blacks Lawôs Dictionary does not define safety but defines a safe work place as: ñA place of employment in which all dangers that should reasonably be removed have been removed, a place of employment that is reasonably safe given the nature of the work performedò[26].

From the foregoing definitions industrial safety could mean every process connected with the production of goods from raw materials or offering of services by people and all the activities involved in the production in a place free from all manner of danger or risk.
Industrial safety is also defined as measures or techniques as implemented to reduce the risk of injury, loss and dangers to persons, property or the environment in any facility or place involving the manufacturing, producing, processing of goods, co-merchandise[27].
The above definition seems to be all encompassing as it includes the safety of the industrial environment which recently has become a matter of a great interest.

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[24] S.Wehmeler, 6th Edition, Oxford University Press, 2000) p.611.
[25] Ibid 2010 Edition.
[26] Supra p. 1458.
[27]" Definition of Industrial safety ' Source ODE. Http: www.eionet/europa.eu/gemet/ accessed 18/08/2014.

Industrial safety is primarily a management activity which is concerned with reducing, controlling and eliminating hazards from the industries or industrial units[28]. The safety of workers in industries is paramount and therefore obligatory to the employers and to the nation at large. That was the decision in the *Chemical & non Metallic Product of Senior Staff Association v Benue Cement Company Plc* where the court held, ñThe safety of workers is of paramount importance not just to the company but also to the country at large[29]ò

Consequently in the instant case, the National Industrial Court confirmed the IAP award in this regard and ordered that the management of the respondent company should ensure that all safety and health equipment in the plant are functioning. Also, that those appellant members should be issued with all the relevant safety gears such as boots, overalls, helmet, goggles, gloves, respirators and welding jackets on regular basis.[30]

1.10 Safety Mechanisms in Industries

It is worthy to note that this study may not exclusively provide all the safety equipment in use in the industries to ensure safety but will precisely discuss them. The Factories Acts[31] make provisions for health and safety of workers in industries. The Acts equally made provisions for safety gears/equipment that industrial workers must use to protect themselves against danger.[32]

In Industries attempts are made to design process for efficient and safe operation for all hazards to be kept under control, however for there to be industrial safety according to R.K. Jain et al, it is necessary to use Personal Protective Equipmentò (PPE)[33]. He further stated that these PPE do not eliminate the hazard, but that they are designed to interpose

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[28] (http://www.scrbd.com/doc accessed 18/09/2016

[29] K.Oluwole, Digest of Judgements of National Industrial Court 1979-2006,p.416 at 421.

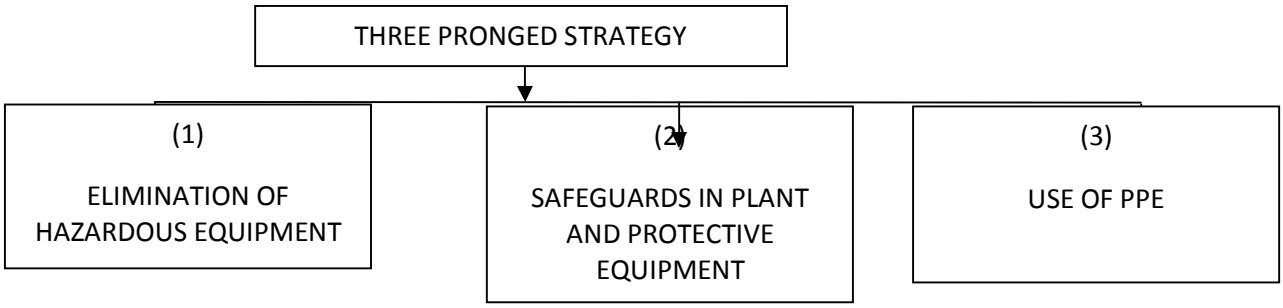
[30] Ibid.

[31] From the first factories Act of 1802 to the most recent one, the Act will be exhaustively discussed later in this research.

[32] Sections 7-12 and sections 14-36 of the Factories Acts.

[33] R.K. Jain & Sunil S. Ra O*, Industrial Safety, Health and Environment Management System* second Edition, (Romesh Chander Khanna for Khanna Publishers 2010).

an effective barrier between a person and harmful objects, substances or radiations[34]. Jeremy Stranks viewed Personal Protective Equipment (PPE) as ñsafe personô strategy. Provided it is worn or used correctly all the time that the person is exposed to a hazard, PPE seems to be a complete safety measure.[35] It is worthy to note that safety measures are most of the times in the three pronged strategy[36].



Note (1) and (2) are essential and not substitutes for (3)

Example

A welder needs three protections

(i) Protection of Eye

(ii) Protection from Electric shock

(iii) And consequential loss of muscle control[37].

Use of special protective Equipment that is the PPE minimizes the risk of injury in the event of exposures to the hazard. A typical example is at a construction site, wearing a hard hat eliminates the possibility of head injury by falling object. Objects falling from height attain velocity and cause head injury to workers on floor level. Use of protective head gear will prevent or minimize the injury.

One impediment to Personal Protective Equipments (PPE) is resistance from workers because the use of PPE may be slightly less comfortable initially, but with practice workers could become accustomed to them.

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[34] Ibid.

[35] J. Stranks, *Health & Safety Handbook*,(Kogan Page Limited (120 Pentoville Road London N19JN United Kindgom 2006) www.kogan_page.co.uk.

[36] R.K. Jain p. 107.

[37] Ibid.

Personal Protective Equipment and costumes according to R. K.Jain[38] are here under provided in a table.

Personal Protective Equipment and Costumes

Protected Part	**Personal Protective Equipment**
1. Protection against Electric shock	1.1 Insulating glows, shoes 1.2 Faraday cage 1.3 Insulated tools 1.4 Safety belt against fall
2. Protection of Eye	1.1 Goggle 2.2 Cover goggle 2.3 Spectacle 2.4 Shields 2.5 Combination lenses 2.6 Dust screen 2.7 Head frame 2.8 Lenses 2.9 Wire mesh
3. Protection of face and Eye	1.1 to 2.9 above, 2.10 Welders helmet 2.11 Hoods
4. Protection of Arms, hand and finger	4.1 Finger cots or stalls 4.2 Gloves band cuff
5. Protection of foot and leg	5.1 Shoes 5.2 Guards 5.3 Safety to shoe
6. Protection of head	6.1 Head safe guards 6.2 Hard hats 6.3 Protective caps
7. Protection of ears against Audible Noise	7.1 Ear plug 7.2 cushion 7.3 Helmet
8. Protection of Respiration system	8.1 Respirator 8.2 Gas mask 8.3 Airline helmet, hoods 8.4 Hose blower

[38] Ibid p. 108.

	8.5 Chemical cartridge 8.6 Mechanical filler
9. Protection of skin and Body against Heat or fire	9.1 Protective costumes (a) Leather apron (b) Asbestos apron (c) PVC apron (d) Lead apron (e) Safety belt
10. Safety against fall	10.1 Safety Belt

Employees must be trained and motivated by the employers to enable them achieve industrial safety.

CHAPTER TWO HISTORY AND LEGAL FRAMEWORK OF INDUSTRIAL SAFETY

The first chapter has dealt with the meaning of industrial safety and safety mechanisms in industries. This chapter will focus on the history and legal framework of industrial safety in Nigeria and in other jurisdiction.

2.1 History of Industrial Safety Laws in the United Kingdom

Unlike other aspects of laws dealing with rules of human conduct which are as old as humanity itself, the law on industrial safety or safety at work or compensation for lack of it does not seem to be regulated to any extent by law in the earliest times. This may not be surprising, since the labour laws of those times were not affected for benefit of workers but for the advantage of employers.

More so, in the feudal period, the primitive technology of agriculture which was the occupation of the overwhelming majority could not have created the number of casualties which were generated at latter times. Thus this gave rise to the notion that the risks of work were distinct from the risk of everyday life.

It is worthy to note that with the rise of capitalism, the expansion of employment in the industry, the fracturing (by the intervention of contractual notions) of the feudal bonds which through generations had bound employer and work together. The intensification of methods of production and the acceleration of technological development (both of machines and substances) did not, apparently, give rise to any legal intervention in matters of work, safety, health or welfare, or compensation for injury at work at any point in the transformation from feudalism towards capitalism in the sixteenth, seventeenth and eighteenth centuries[39].

[39] B. Cotter et al, *Munkman on Employers Liability* ,14th ed..,(UK Lexis Nexis, 2008 p.3).

The common law, with over seven hundred years of continuous development behind it, seems not to have made any apparent response to industrial safety until 1837, and the statue law intervened only about 35years earlier[40].

In 1802. ñAct for the preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills, and Cotton and other Factoriesò was the first Act to be passed by the British Parliament on industrial safety and other related matters and it was passed with little or no opposition. The Bill was promoted by Sir Robert Peel, a prominent and wealthy cotton Mill owner, against a background in which at the end of the eighteenth century, the pace of the industrial revolution accelerated. The 1802 Act was primarily intended to protect the pauper or óparishô children whose labour was customarily employed (under the guise of bestowing apprenticeships on them) in the cotton Mills[41].

The character of the Act seems to be more concerned with morality than health. Each apprentice was to be provided with one complete suit of clothes each year and sleeping accommodation was to be such as to separate the sexes and provides that no more than two slept in one bed. The Act further provides that the premises were to be given two washings with quicklime yearly, and ventilated with fresh air by means of a sufficient number of windows.

The Act further provides that the apprentices should be instructed in reading, writing, arithmetic and the principles of the Christian religion and that those who were members of the Church of England should be examined annually by a clergy man and be prepared at the proper age for confirmation.

At the midsummer sessions in districts in which factories were situated the justices of peace (JP) were to appoint two factory inspectors, one a JP , the other a clergy man

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[40] Ibid.

[41] Thompson, *The Making of the English Working Class* (1968) ch. 10 as was cited in Barry Cotter Ibid p .4.

to make an annual visit to the factories and mills and such premises in the locality were to be registered with the clerk to the justice.

There was a decline in moral standards and this heightened the fear of unrest amongst the working class after the French Revolution. Child labour was being increasingly utilized in many workplaces other than cotton mills thus it seems that the JPS in the cotton district did not enforce the 1802 Act. Sir Robert Peel introduced a further Bill in 1815 to restrict childrenôs hours to ten, this was applicable over a wilder class of factories against some oppositions. But in 1819, 1825 and 1831 enactments were passed to fortify the 1802 Act[42].

2.1.1 The Common Law

In 1837, the land mark case of *Priestly v Fowler* established that an employer owed in common law, a personal duty of care to his employee which was actionable by the employee if breach resulted in injury.[43]The case was a response to the common law doctrine of common employment which states that if the cause of injury resulted from the negligence of a fellow employee, the employer was not to be held vicariously liable to the former. But *Priestly v. Fowler* established that employer could be personally liable if he was not responsible for the employeeôs injury.

The facts of the case were that the wheel of a butcherôs van collapsed because the van was over loaded. The employer was not personally concerned in the loading and was not therefore liable. The position seem to be same even in large scale factory or other industrial undertakings where the employer had no personal role at all and all functions were delegated to subordinates[44].The common law as a means of regulating unsafe or unhealthy working conditions was therefore gravely limited.

2.1.2 Safety Legislations

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[42] Carpenter ed, The Factory Act of 1819, six pamphlets 1818ï 1819 (1972) (as was cited by Barry cotter Ibid p.5.
[43] (1837)319& WI.
[44] *Bartonshill Coal Co v Reid,* MC Guire (1858) 3 Macq 266 and 300.

It may be said that the first safety statutes, as opposed to health and welfare regulation, were the Factories Act of 1844 and the Coal Mines Inspection Act of 1850. These Acts marked a historic episode in the legal history. The doctrine of freedom of contract established in the field of employment relationships received a sudden attack by statute. According to Simitis, the era was to be the beginning of óa growing juridification of the employment relationship[45] that was because the application of the doctrine of freedom of contract seemed to have sanctioned the employerôs economic power to individualize work in the mass productive enterprises of factory and Mine.. But with the passage of the statute it seemed that the breakdown of the societal and political order caused by the freedom of contract doctrine would be restored.

In his view, Barry Cotter also pointed that it was the very success of legislative intervention into the employment relationship that led to the evolution in the British trade union movement of a political voice[46]. Although demands for freedom of association seemed to have priority over those for health and safety protection yet at that time, the success of the health and safety legislation could be said to be part of the explanation of the minimal role which health and safety demands had in collective bargaining.

The inadequacy of the common law in health and safety had by 1862 become very evident. The decided case of *Clarke v Holmes* established that an employer must provide and maintain safe machinery[47]. But it has been established by the courts that the employer could, under the doctrine of common employment, avoid the liability for defective machinery by simply delegating to a subordinate the responsibility for making and keeping it safe[48]. In these cases, employees were held to be just as much in common employment with the managing director as with employees of lesser status.[49]

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[45] Simitis ó*The case of the employment relationship, elements of a comparison in Steinmetz* (ed) Private *law and social inequality in the industrial Age* (2000) at page 195 as was cited by Barry cotter QC etal. Ibid p. 8.
[46] Barry Cotter et al op. Cit p. 7
[47] 7H & N937
[48] *Wilson v Merry* (1868) LRI SC &DIV.326. *Allen v New Gas Co*(1876)1EX D 251.
[49] Ibid.

In 1880, the Employerôs Liability Act seemed to be passed partly to placate the rising of the ónew unionismô. It placed some statutory limitations on the device of delegation under the doctrine of common employment so as to enable damage claims to be brought. The employee could only succeed under this Act, if he or she could prove that the accident resulted from a defect in óthe ways, works, machinery or plant`, or from the negligence of some person placed in a position of superintendence or whose orders the workman has to obey. In the case of a railway, the negligence of a signalman or engine driver. The effect of the Act was reduced by the provision that employers and employees could contract out of it[50].

By 1875, the law relating to factories and workshops had come to be contained in a patchwork of statutes and regulations, each designed to meet the need of the moment without regard to any general pattern of development. The law was reviewed by a Royal Commission, whose report, published in 1876, that is to the passing of the Factory and Workshop Act of 1878. This Act was the first attempt at comprehensive factory legislation.

In 1898, the landmark decision of *Groves v Lord Wim Borne* established that an injured employee could find a claim in damages for breach of statutory duty[51] In that case in respect of unfenced machinery it was held that the defence of common employment did not apply to actions for breach of statutory duty. Rigby L.J. said:

> ñThere has been a failure in the performance of an absolute statutory duty, and there is no need for the plaintiff to allege or prove negligence on the part of anyone in order to make out his cause of actionò that being so, the doctrine of common employment is out of the question.ò[52]

[50] Pelling , *Popular Politics and Society in Late Victoria Britain* (1968); *Shannon the Crisis of Capitalism; Hunt British labour History 1825 – 1914 (1981*) (as was cited by Barry cotter) Op.cit p.9.
[51] (1898) 2QB 402.
[52]Ibid.

Damages claims henceforth became a prominent feature of health and safety law. According to Barry Cotter such claims were based on breach of statutory duty [53]which, after the decision in *Groves v Lord Wimborne*, rapidly over took the significance of common law claim.[54] The claim was still crippled by the doctrine of common employment despite the liberalization of the Employersô liability Act of 1880 and the rejection of the defence of volenti non fit injuria in *Smith v Baker & Sons*[55].

2.1.3 The Workmen's Compensation Acts

In 1897, the first Workmenôs Compensation Acts was passed; it provided compensation for injury at work on a basis akin to social insurance. Compensation became payable wherever an employee was incapacitated by an accident arising out of and in the course of employment. The compensation took the form of a weekly payment during incapacity representing half the wages which the employee was earning. Where the employee caused the accident by misconduct, he would be compensated and in minor accidents too, except where the injury was a permanent disability. A small sum was payable to dependants on death. Workmen compensation Acts of 1906 followed the 1897 Act. It extended the 1897 Act which applied only to a limited group. The 1906 Act covered a further six million workers by its application to all wage earners within a certain financial limit. The Act was further consolidated in the Workmenôs Compensation Act 1925 which gave compensation for industrial disease as well as for accidents.

2.1.4. Factories and Workshop Act of 1901

The enactment of the Factory and Workshop Act of 1901 was the first attempt at the rationalization of factory legislation. It remained the principal statute for the regulation of factories until the factories Act of 1937.

2.1.5 Factories Act of 1937

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[53]Barry Cotter-etal Op.cit p.10.
[54]Supra.
[55] L 1891 JAC 325.

It repealed the Factory and Workshop Acts of 1901 to 1929 and other cognate enactments. It provided for the first time, a comprehensive code for safety, health and welfare applicable to all factories irrespective of the type of factory they were. Its many new requirements included such important safety provisions as those relating to lifting tackle and cranes, floors and stairs, means of access and places of work and to steam and air receivers etc. This Act was further amended by the Factories Act of 1948 which was repealed and replaced by the factories Act of 1961.

2.1.6 The Common Law Between the World Wars

The doctrine of common employment had become an indefensible embarrassment to the common law after the First World War. In the case of *Wilsons & Clyde Coal English* the doctrine of common employment was limited by imposing on employers a personal, non-delegable duty to provide a safe system of work, a competent staff, and safe plant and equipment[56]. According to Cotter. ñThe decision in English case proved to be a more important turning point than the form abolition of common employment ten years later; its influence on the shape of health and safety law remains to this day.ò[57]

The principle in the English case seemed to reinstate the principles established more than 80 years before in cases like *Sword v Cameroun*[58], which established a duty on the part of the employer to provide a safe system of work, *Brydon v Stewart*[59] etc.

2.1.7 Rationalisation in 1970s'

In 1974, the legislative approach to health and safety was transformed. The labour government in 1967 published a consultative document with a view to consolidating in one Act and extending to other Workplaces the offices, shops and Railway Premises Act 1963 and the factories Act of 1961.A Commission was established in June 1970 under the Chairmanship of Lord Robens to consolidate the above Acts. The commission recommended that;ña comprehensive and orderly set of revised provisions under a new

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[56] (1938)AC 57.
[57] Barry Cotter-etal Op.cit p.4.
[58] (1839) 1 D 493.
[59] (185J) 2 Macq 30.

enabling Actô. The new Act should contain a clear statement of the basic principles of safety responsibilityö[60]. The 1974 Act was enacted but the European Union and its health and safety directives ultimately provided the impetus for the production of óa comprehensive and orderly set of revised provisionsô revised, harmonized, updated, simplified and reduced in number, rather than the 1974 Act.

The great achievement of the Health and Safety at Work Act 1974 was to unify the administration of the Health and safety legislation and give it jurisdiction over (nearly) all workers. The Act has also has been significant in making provision for the appointment of safety representatives and safety commitments, and rights to information and consultation about health and safety matters for them and workers generally.

2.1.8 The European Revolution

The Robens Report was published in the same year that Britain joined the ócommon marketô by enacting European Communities Act 1972. The post war movement towards European integration first found form in the Treaty establishing the European Coal and Steel community in 1951 and it was followed by other treaties[61]. The United Kingdom joined with effect from 1 January 1973 and implemented the obligations contained within the Treaties by enacting in the UK the European Communities Act 1972.

In 1986 Member States signed the Single European Act which came into effect in 1987. This Act amended the Treaty of Rome by inserting a new Art 118A to the Treaty of Rome (now Art 137 EC) which permitted the community to introduce minimum standards for the health and safety of workers by a óqualified majorityô vote of member states. It was the introduction of this article that enabled the European revolution in health and safety legislation.

2.1.9. Deregulation

In the field of health and safety at work, UK governments since 1980 sought to resist the creation, content and adoption of many of the EU Directives. The EU, on the other hand,

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[60] Cotter Op .cit p. 17.

[61] Treaty setting up the European Atomic energy community and the Treaty establishing the European Economic Community both signed in Rome in 1957.

has been concerned to ensure both a humanitarian social dimension and to ensure universal application of standards so as to prevent ósocial dumpingô.

Deregulation had to some extent already started before the 1994 Act was on the statute book. In 1993 the Management and Administration of Safety and Health at Mines regulations 1993, SI 1993/1897 replaced parts of the Mines and Quarries Act 1954 and subsiding legislation. On an application for judicial review to quash the 1993 Regulations on the grounds that they were ultra vires. This was because they were not designed to maintain or improve the standards of health, safety and welfare established by or under the Mines and Quarries Act 1954 as required by S I (2) of the HSWA 1974. The Divisional court held that whether the 1993 Regulations were so designed or not was not a matter for the court but for the secretary of state[62].

This case contrasts with the decision in *Stark v Post office*which the court of Appeal held that the Work Equipment Directives minimum standards were not permitted to substitute for higher standards in UK regulations, indeed the Directives were intended to maintain higher standards in domestic law.[63]

The strongly deregulations agenda pursued by the conservative governments of 1980s and 1990s seemed not to have any great impact on health and safety law. Thus beyond the imposition of funding cuts on the Health and Safety Commission (HSC) and Health and Safety Effectives (HSE) and the adoption of a minimalist and grudging approach towards the transposition of European Directives[64].

The advent of a labour government seemed not to have led to the introduction of major legal changes. This was contrary to the statement made by the government[65].A new set of regulations have been introduced a number of existing ones amended. Example, with

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[62] R v Secretary of State of Employment, exp NACODS (16 December 1993, un reported Div Ct) (as was cited by Cotter Op.cit p. 29.

[63] (2000) ICR. 1013.

[64] James , *The European Community: A positive Force for Health and Safety*? (Institute of Employment Rights, 1993.).

[65] John Prescott, when Secretary of State for the Department of the Environment, Transport and the Regions, indicated that in his second term of office in the labour government would introduce a major piece of legislation and Health and safety at work: although it was wondering whether this would go so far also repeal and replace the HSWA 1974 itself. (The view of Cotter in his book Cotter Op.Cit p. 30.

effect from 27 October ,2003, the exclusion of civil liability for breach of the Management of Health and Safety at Work Regulations 1999 was revoked. The Work at Height Regulations 2005 revoked and replaced all prior regulations so far as they deal with falls and falling objects, imposing a stricter regime.

The Control of Noise at Work Regulations 2005 replaced the 1989 Regulations of the same name, again with a stricter regime with lower thresholds. The new control of vibration at work Regulations 2005 replaced the common law and so on. Cotter in his view strongly believes that all these changes are prompted by the adoption of new and amended European Directives and consequently demonstrate the continuing influence of European developments on domestic law[66]. The judiciary in the United Kingdom is not left behind in the field of health and safety at work. The courts are prepared to stretch or even cast aside the confinement of the fundamental foundation garment of employment law, the contract of employment[67]. In *Hawley v. Luminar Leisure* where the employer was held liable for acts of doorman supplied by a contractor.[68] As it stands now, the HSWA 1974 seems to be the enabling statute in health and safety at work. According to Cotter it does not seem that major changes would be made to current statutory frame work for health and safety at work during the course of the next few years[69].

2.2 Historical and Legal Framework of Industrial Safety in Nigeria

The colonization of Nigeria by Britain greatly affected her legal system, thus Nigerian labour law rests largely on the British Model Rules and Practices.

This mode was acquired through the reception of English law in the nineteenth century. By virtue of the courts ordinance 1876 the English Common law, doctrines of Equity and statutes of General Application were received into Nigerian law[70]. Presently, most of

[66] Ibid p.31.
[67] Ibid p. 32.
[68] (2006) EWCA. *Morris v Breaveglen Ltd(t/a)Anzal Construction Co.*(1993) 1CR 766 CA
[69] Cotter Ibid p. 32.
[70] Akintunde E.,*Nigerian Labour law,* [Ogbomoso, Emiola (publishers) Limited 2000] p.4.

these provisions of English labour legislation are now embodied in local statutes E.g. Nigerian Labour Act[71], Workmen Compensation Act[72] and others[73]

In Nigeria there seems not to be a consolidating Health and Safety at Work Act as in United Kingdom. However the Factories Act and presently the Employees Compensation Act 2010[74] make provisions for safety and health of workers in the industries. They also make provisions for compensation when there is a breach of employersô duty. In 2012, a bill was passed by the National Assembly on health and safety of workers, though it has not been signed into law by the President.

It is worthy to note that there are other laws which make few provisions for the safety of workers. Example the Constitution of Nigeria[75], the Labour Act[76], the Petroleum Act[77], and Mineral Act[78]. Safety provisions in these enactments will be glanced through in the course of this work.

2.2.1 The Factories Act

The Factories Act Cap F1 Laws of the Federation (LFN) 2004 hereby referred as the Act commenced on the 11th of June 1987 and by its section 86, repealed the Factories Act (Laws of Nigeria Cap 66). The Act is largely identical in its provisions to the English factories Act 1961 and can be regarded as the most important safety legislation in Nigeria[79].

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[71] Cap L1 Laws of the Federation of Nigeria 2004.
[72] Factories Act Cap F1 LFN 2004, etc.
[73] Health and safety at Work Act 1974 already discussed.
[74] Previously it was the Workmenôs Compensation Act of Cap W6 LFN 2004 but the Act was repealed by the Employees Compensation Act 2010.
[75] The Constitution of the Federal Republic of Nigeria Cap C23 LFN.
[76] The Labour Act Cap L1 Laws of the Federation of Nigeria 2004.
[77] The Petroluem Act Cap P. 10 LFN.
[78] Mineral and Mining Decree 1999 Act Cap M12 LFN 2004.
[79] O.,Oladosu . ó*The Nigerian Labour and Employment Law in Perspective* Second Edition (Lagos) Folio Publishers Limited. 7 Henry Car Street P.O. Box 985 Ikeja p.120.

2.2.2 Analysis of the Factories Act

The first legislation on factories in Nigeria was the Factories Ordinance No. 33 of 1955. This was based on the British factories Act 1937 which was an Act to consolidate the Factories and Workshop Act 1901 to 1929 and other related enactments. Today the Factories Act is codified in the Laws of the Federation 2004 and is cited as the Factories Act Cap F1 Laws of the Federation (LFN) 2004.

Factories Act is divided into eleven parts and has 89 sections. Part 1 deals with the registration of Factories and the appointment of Factories Appeal Board , Part II of the Act contains sections 7 to 13 and deals with Health (general provisions); part III contains sections 14 to 39 and deals with Safety (general provisions); Part IV contains sections 40 to 44 (welfare provisions) whilst part V contains sections 45 to 50 (health, safety and welfare special provisions and regulations other important sections are 78, 83, 87 & 88.

2.2.3. What is a Factory?

Section 87(1) of the factories Act gives the meaning of a factory as any premises in 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 the following purposes, namely;

(a) The making of any articles[80] or of part of any articles, or

(b) The altering, repairing, ornamenting, finishing, cleaning or washing or the breaking up or demolition of any article or

(c) The adapting for sale of any article, being premises in which or within the close or cartilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the person or persons employed therein has the right of access or control etc.

The section above that is section 87 (1) of the Factories Act makes a fundamental alteration to the definition of factory contained in section 5 (1) of the Factories Act 1956

[80] S. 88 defines an article to include any solid, liquid or gas or any combination of these.

in that a factory now means any premises for the making of any article in which one person is employed. Unlike the Factories Act 1956, ten or more persons must be employed to satisfy the definition of a factory. However, the Act further provides that in addition to the definition provided above, the word ófactoryô also includes the following premises in which ten or more persons are employed[81]. Under the Act, an open space may be a ófactoryô if industrial activities are carried on therein[82]. The decision in *Powley v Siddeley Engines ltd* buttresses this provision[83].

In that case, the plaintiff was injured when he slipped on the icy steps of the approach to the aircraft companyôs administrative block. The court held that as the activities carried on in the administrative block included ñprocessesò incidental to the making of aircraft engines, the block and its approach were part of the factory.

To be a factory, however, the object of the óprocessesô must be ñby way of tradeò or ñgainò. In his view Emiola opined that if the object of the process is not for trade or gain that it will not be a factory even where the premises is used for ómakingô or ódaptingô or órepairingô of articles[84].

In *National Union of Road Transport Workers v Nweke Ogbodo & ors* Niki Tobi, JCA (as he then was) said that ñtradeò among other things, ñalso conveys the meaning of occupation or employment as a means of procuring livelihood[85]ò. This decision therefore could be said to mean that the manufacturing of articles in a workshop solely for the use of the institution cannot be said to be ña tradeò and any person that gets injured in the process can lay no claim under the Act.

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[81] Section 87 (i) – (ix) and S. 87 (2) (7).
[82] Section 87 (6).
[83] (1965)3All E.R 612.
[84] Emiola Supra p. 186.
[85](1998) 2NWLR Pt.537)189, 198.

But the position is different under the common law in *Wood v London County Council* where the plaintiff was injured by an electrical machine used for the mincing of meat in the kitchen of a municipal hospital. The court held that the claim must fail because the process carried on in the kitchen was not for the purpose of trade or gain.[86] The court took the view that a work-place must be used for the making of product for gain or reward before it can come within the definition of ófactoryô[87].The employment in the factory as provided in the Act must be for wages. According to Bimbola Atilola ñthere must be a relationship of employer and employee or employment for wagesò.[88]

In *Pullen v Prison Commissioners* a prisoner was injured while working in a prison workshop. He claimed damages for breach of statutory duties under the English Factories Act. The court held that there was no relationship of master and servant between the prisoner and the prison officials.[89]

Also in *Weston v London County Council* where a technical institute was held not to be a factory in so far as those admitted there are admitted as scholars and not as employees[90]

Looking at the provisions of section 87 it seems that the premises must be used for one of the three main purposes as stated in paragraphs a ï c, but there seems to be an added premise in which a steam boiler is used[91]. Section 56 seems to be a deliberate attempt to extend the application of the statute to an area of danger to which the Act would not otherwise have applied. Thus the Act was, apart from the common law applied to such a case in *obere v Board of Management, Eku Hospital* In this case the plaintiff was employed as a boiler and steam operator. The boiler had a defective motor and it was reported to the hospital authorities on several occasions. The authorities took no action, an exposed fly wheel cut the plaintiffôs thumb and he sued the authorities claiming damages for this injuries. The court held the hospital authorities liable and awarded

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[86] (1941)2 All E.R 612.
[87] Factories Acts sec. 87 (1).
[88] A.,Bimbo ,*Annotated Nigerian Labour Legislation*(Lagos: Hybrid Consult), p. 83.
[89] (1957) 3 All E.R.470.
[90] (1941)KB 608.
[91] Section 87(1) a-c.

damages which was increased on appeal by the supreme court.[92] From the above decision, the purposes of the premises could be seen to be extended beyond the ambit of the Act.

Brief Analysis of Some Sections of the Factories Act

Sections 7-13 lay down general conditions of work so far as the health of workers employed in a factory is concerned.

Section 7 of the Act provides that every factory shall be kept in a clean state and free from effluvia (smells) arising from any drain, sanitary convenience or nuisance.

In the previous Factories Act that is Factories Act 1956 sections 13-19 make provisions for the cleanliness, ventilation, lighting, drainage and sanitary convenience. The two seem to be same except the added clause ófree from effluvia (smells).

Section 8 (1) provides that the factory should not be over crowded as to cause risk of injury to the health of the persons employed there. Section 9 provides for effective ventilation and section 10 of the Act provides for lighting of the factory.

Section 11 provides for the drainage of the floor and section 12 provides for sufficient convenience for persons employed in the factory. Section 13 provides for the duty of inspector as to sanitary defects which includes giving notice to the local government council and after three months if the nuisance is not abated the inspector will abate it and the owner bears the cost of abating.

Section 14-24 of the Act deal with general safety of those working in the factory sections 14 and 15 provide that instead of fencing any part of a prime mover or transmission machinery, it may be made safe by its position or construction, except as regards prime movers other than those driven by electricity. Section 16 makes similar exception as regards electrical equipment or appliance by providing that it shall be of such construction as to be safe for use by all persons required to use same or who shall come into contact with same and shall be maintained at all times in a safe condition.

Section 17 of the Act is of a particular importance it provides thus:

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[92] (1978) ANLR 155;(1978) 1LNR 246.

> ñEvery dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working in the premises as it would be if securely fenced, provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fitted guard, the requirement of this subsection shall be deemed to have been complied with if a device is provided which in the opinion of the Director of Factories satisfactorily protects the operator or other persons from coming into contact with the partò.

This section repeats a similar provision in section 22 of the Factories Act 1956 except that under the current Act the title ñDirector of Factoriesò is now used in place of ñChief Inspectorò used in the 1956 Act.

Looking at the above sections that is sections 14 and 15, it seems that the duty to fence under the sections applies to all movers and transmission machines whether they are dangerous or not. But section 17 applies to every part of all other machines only in so far as it is dangerous. The Act does not explain that dangerous part of any machine must be ñsecurely fencedò Lord Denning in his view stated that the machines are in dangerous state if ñin the ordinary course of affairs danger may reasonably be anticipated from the use (of them) without protectionò[93].

The duty to ñsecurely fencedò has been held by the court to be an absolute one in the sense that a guard must be provided even if it will render the machinery in question commercially practicable or mechanically useful the statute in effect prohibits its use[94]. It is worthy of note to know that the test to be applied in determining whether a part of a machine is dangerous is forseability.

However, once it is proved that:

(i) a part of a machine is dangerous

(ii) It is unfenced

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[93] *Close v Steel Company of Wales ltd* (1961) 2 All E.R. 953, 955.
[94] *John summers & Sons Ltd v Frost* (1955) AC 740.

(iii) A worker has been injured by the lack of fencing, forseeability is no longer relevant and so the fact that the accident occurred in an entirely unexpected way will not absolve the occupier. That was the decision of the court in *Millard v Serck Tubes Ltd.*[95]

The above decision seems to be sound and logical because if the employer is to depend only on forseability he might escape liability but with the above he will take care even when danger is not foreseeable. Section 19 of the Act sets out the standard of fencing required under the Act. All fencing or other safe guards must be of substantial construction, and constantly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed for examination and for any lubrication or adjustment shown by such examination to be immediately necessary. The difficulty faced with the sections is in determining when the parts required to be fenced or safeguarded are in motion. According to Ogunniyi ñit is straining the language to say the ñin motionò means not ómovementô but ñrunning as it would normally runò.

In *Horne v Lec Refrigeration Ltd* it was held that a machine may of course be in motion but not in use as where it started accidentally; therefore a breach of the provisions of the Act may be committed even though the machine was in motion by accident. In an earlier case ï *Richard Thomas & Baldwins ltd v Cummings* Lord Reid in his judgment which Lord Keith concurred, said that the phrase ñin motionò appears to him to be more apt to describe a ócontinuing stateô of motion lasting or intended to last for an appreciable time.[96]

But in another decision[97] of the House of Lords, Lord Pearce in his view stated that the views of Lord Reid in Cummingôs case, ñare inconsistent in the view that machinery is not motion or in use. when it is not actually engaged in commercial productionò E.E. Uvieghara in his book[98] opined that machinery may be in motion or in use even when it is not being run for the purpose of production. He further stated that within that principle that whether a machine is in motion for the purposes of the Act is a matter which is

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[95] (1969) 1WLR 211.
[96] (1955)AC 321,329.
[97] *Irwin v White Thomkins & Courge Ltd* (1964) 1 ACER 545
[98] E.E. Uvieghara ,Labour Law in Nigeria,(Malthouse Press Ltd, 2001) p. 203.

largely one of fact and degree in every case. It is quite obvious that the English courts decisions that restricted interpretation were given to the word ñin motionò as provided in section 16 of the English Factories Act 1961 which is same with our section 19 of the Factories Act [99]. But it has also been held that ómoving partô is a part which may at any time move, whether it was doing so at the time of the accident or not this was the decision in *Kelly v John Dale Ltd*[100].

From the above one may say that the possibility to lay down any general interpretation to the word ñin motionò and ñin useò might be illusory. Furthermore, on the issue of fencing, it is clear from the words of section 19 of the Act that the obligation to fence is an absolute one since it is not qualified by such words as ñreasonably practicableò or ñso far as practicableò or similar words[101]. It has accordingly been held that there is a positive duty to fence which is absolute[102]. It is worthy of note from the provisions of section 14-17 of the Act that the object of fencing is not to protect any part of a machine but to protect every person employed or working on the premises from coming into contact with the machine. Thus the courtôs decision that the fence is intended to keep the worker out, not to keep the machine or its produce in[103].

The duty to fence under the Act is limited to machinery installed as part of the equipment of a factory as a means of production. It does not apply to machinery actually made in the premises for sale as this is not part of the productive process and so need not be fenced. In other words, the Act does not apply to the product of a factory[104].

However in *Irwin v White Thomkins* & *Courage Ltd* the House held that machinery which has been completely installed as part of factory equipment comes within the

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[99] *Knight v Leamington Spa Courier Ltd* (1961) 2 QB 253; *Mitches v W.S. Westin*
[100] Cap FI LFN 2004
[101] (1965) I Q B 18
[102] *John Summers & Sons Ltd v Frost* Op.cit P. 751
[103] *Nicholas v F Austic (Leyton) Ltd* (1946) A.C. 493 at 505 Per Lord Simmonds
[104] *Parvin v Morton Machine co. ltd* (1952) 1 A II ER 670.

fencing provisions even though the machinery has not been put into use but provided it is intended to be so used.[105]

Section 20 extends the duty to fence any machine intended to be driven by mechanical power to manufacturers, vendors and hires of machines. This section imposes only criminal liabilities on manufacturers, vendors and hires for any failure to comply with its requirements but does not make them liable to any injured worker[106].

Sections 21 and 22 impose a qualified statutory duty in respect of vessels containing dangerous liquids and self acting machines. Every fixed vessel etc or poisonous liquid must either be securely fenced or where the nature of work makes these measures impracticable or practicable steps must be taken by covering, fencing or other means to prevent any person from falling into the vessel, structure slump or pit. A warning notice in English and in such Nigerian languages as an inspector of factory may direct indicating the nature of the danger, must be marked on or attached to the plant, of if that is not reasonably practicable, be posted nearby[107].

In the case of self-acting machine all practicable steps must be taken by instruction to the person in charge of the machine to ensure that no person employed shall be in the space between any traversing part of a self-acting spinning mule and any fixed part of the machine towards which the traversing part moves on the inward run except where the machine is stopped with the traversing part on the outward run[108].

Section 23 imposes a general duty on employers or occupiers of factories in respect of training and supervision of inexperienced workers. It stipulates that no person shall be employed to handle any machine or process that is liable to cause bodily injury unless the person has been fully instructed as to the dangers of the machines and the precautions to be taken and has received adequate supervision by a person who has a thorough

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[105](1964)1 WLR 387.
[106] *Biddie v Truvo & Engineering Co. Nig (1952) 2 ALL ER 385.*
[107] *Factories Act, S. 21 (2).*
[108] Ibid S.S (2).

knowledge and experience of the machine or process. Where the training is inadequate, the employer will be liable for any resulting injury. Thus *in Federal Super Phosphate Fertilizer & Co Ltd v Otaru* a worker employed in an industrial process and taught how to process sulphuric acid for only two months and six weeks later, he was injured in the process when a fellow worker loosened the sulphuric line. It was held that the training was inadequate for which the employers were held liable.[109]

Sections 24-26 impose major duties on occupiers of factories in respect of various types of lifting equipments. These machines according to the sections must be of good construction, sound material adequate strength and free from patient defect and must be properly maintained. This duty to maintain is absolute and continuing and it is not discharged if the equipment is at any time not in an efficient state.

In *Galashield Gas Co v O' Donnell* the court held that it is because the construction or material is not sound or the equipment has not been properly maintained that was why the lift broke[110]. Section 27 ï Every occupier of factory is expected to maintain a register containing the particulars set out in schedule 3 with respect to all chains, ropes, lifting tackle and all lifting.

Sections 28-30 impose qualified obligations to ensure safe means of access and safe place of employment. All floors, steps stairs, passages and gangways in a factory must be soundly constructed, properly maintained and kept at all times[111]. All practicable steps must be taken to remove any dangerous fumes[112] and any explosive or inflammable dust gas, vapour or substance[113].

In *Latimer v A.E.C* part of the factory was flooded after an exceptionally heavy rainstorm which left the factory coursed with water and oil. An employer was injured on one of the unprotected surfaces and he instituted an action in court. The court rejected the claim on the ground that a person who slipped was very unlikely to break his leg, and so the

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[109] (1986) 1NCTR 132.
[110] (1949)1AC 275.
[111] Ibid S. 28 (1).
[112] Ibid S. 29.
[113] Ibid S. 30.

precaution the plaintiff sought was a disproportionate one which would involve great expense and inconvenience both to fellow employees and to management[114].

Section 31-34 lay down safety standards in respect to steam boiler, steam receivers, steam containers and air receivers. The standards cover good construction, sound material, adequate strength, proper maintenance and testing, and the provision of safety values and pressure gauges. Sections 35 and 36 impose a twofold duty for the prevention of fire and means of escape in case of fire.

Sections 37-39 empower any factory inspector to issue an improvement notice if he is satisfied that any machinery used in the factory or any process is likely to cause bodily injury. It is to issue a prohibition notice if he is satisfied that any factory or part of a factory is in such a condition that any process or work cannot be carried on without undue risk to the safety and health of persons employed therein.

Section 40-44 provide for the welfare of the workers, provision of drinking water, adequate suitable facilities for washing, adequate accommodation for clothing not worn during working hours. No general standard of suitability has been laid down but it has been held that the risk of theft should be taken into account[115].

Section 43 ï concerns the medical treatment of the workers, the basic rule is that one first aid box or cupboard of the prescribed standard must be provided and maintained for every 150 employees or every fraction of that number.
By section 44 the Director of Factories may exempt any factory from the requirements of section 43 if an ambulance room is provided at the factory and such arrangements are made for the immediate treatment of all injuries occurring in the factory.

Sections 45-50 make special provisions and regulations for the health safety and welfare of workers employed in factories. By section 45, the employer or occupier of factory must take all practicable measures to protect employees against inhalation of dust or

[114] (1953) AC 643.
[115] *McCarthy v Daily Mirror Newspaper* (1949) 1 All ER 80 1.

fume or other impurity and to prevent its accumulation in any workroom. Where however the nature of the process makes it practicable, exhaust appliances must be provided and maintained as near as possible to the point of origin of the dust, fume or other impurity, so as to prevent it from polluting the air of any work room. What is practicable depends upon current knowledge including scientific knowledge[116].

This obligation arises either when there is giving off of any dust or fume which in character and extent is likely to be injurious or offensive or when any substantial quantity of dust of any kind is given off[117]. Where the first condition is relied upon, it must be shown either that the occupier knew of the likelihood of injury or that by the standards of reasonable prudence or well informed factory occupier, he ought to have known it[118].

Section 47 places an obligation on every employer or occupier of factory to provide suitable protective clothing and appliances including where necessary suitable gloves, foot wear, goggles and head coverings for workers employed in any process involves excessive exposure to wet or to injurious or offensive substance.

Section 48 deals with processes involving special risk of injury to the eyes of persons employed in them. It obliges an employer to provide suitable goggles or effective screens to protect the eyes of any person employed in the processes specified in the fourth schedule. The duty to provide suitable goggles or effective screens is an absolute one. In order to ñprovideò them within the meaning of the Act, it would be necessary either that they come easily and obviously to the hand of the work man who is about to grind or at least that he should be given clear instruction where he is to get them[119].

The word ñsuitableò in the section does not mean that the goggles provided must ensure protection; it is enough if they are well adapted for the purpose and for the workman[120].

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[116] *Richards v Highway Iron founders ltd* (1955) 3 ALL E.R. 205 .
[117] Ibid.
[118] *Ebbs vJames Whitson Ltd* (1952) 2QB 877.
[119] *Finch v Telegraph Construction & Maintenance Co. Ltd* (1949) All E.R 452 at 455.
[120] *Daniels v Ford Motor Co. Ltd* (1955)/AC E.R. 218.

But in *Rogers v George Blair & Co Ltd* where the employer supplied goggles but the employee had particles of carbon stuck his eyes. The English court held that the employers had not provided suitable goggles not withstanding that the goggles were the best that could be devised but also that they could have been made suitable if there were an individual fitting for each workman. Salmon L.J. said that the protection, to be suitable, need not make it impossible for the accident to happen but it must it highly unlikely.[121]

Sections 51-53 deal with notification and investigation of accident in the factory which causes any loss of life or disables any person for more than three days. It is an offence for any employer or occupier to fail to report any accident.

Section 56 extends the application of appropriate provisions of the Act to any premises in which a steam boiler is used, as if the premises were a factory and as if the person having the actual use or occupation of the premises were the occupier of the factory. In *Obere v Board of Management, Eku Hospital* the plaintiff who was employed as a steam boiler operator was injured by a fly wheel which had become exposed and about which he had made several reports to his employees it was held that the employers were liable.[122]

Section 58-59 oblige the employer to keep a general register, recording such matters as the certificate of the factory, every other certificate issued in respect of the factory, details of the washing and painting or vanishing of the factory accidents and industrial diseases and such other matters as may be prescribed by regulations. The register shall be preserved and kept for a period of seven years or such other period as may be prescribed for any class or description of register.

Section 60 obliges the employer to post the prescribed abstract of the Act and other document in a prominent position in the factory. It seems that the reason for this is to notify the employees about the Act. But it is necessary that a step be taken further in

[121] (1971) 11 WR 391.
[122] (1998) ALL NLR.

educating the employees especially where there are uneducated ones because the issue of industrial safety is every bodyôs responsibility.

Section 61 is concerned with precautions employees are expected to take in their own interest in the factory. The section obliges every person employed in a factory not to willfully interfere with or misuse any means, appliance, convenience or other thing provided in pursuance of the Act for securing the health, safety and welfare of persons employed in the factory. It has been held that the words willfully interfere with or misuse means something more than merely touch or misplace and that they mean something in the nature of a perverse intermediating with the thing provided[123]. The section also obliges every employee not to willfully do anything likely to endanger himself or any other person.

Although the Act does not state expressly that it is an offence for any employee to willfully interfere with or misuse safety means or appliances, yet it is assumed that an employee who willfully interferes with or misuses safety means or appliances is guilty of an offence. According to Bimbo Atilola it is because ñthe offences created under the Actò[124] Also looking at the provisions of section 69(2) it seems that the primary responsibility for contravention of the provisions of part viii of the Act, with respect to duties of persons employed, is that of the employee and not the occupier or owner of the factory. This view is consistent with section 143 of the English Factories Act 1961, which has been replaced and enlarged by sections 7-8 of the Health and Safety at Work Act 1974, under which it is an offence for an employee to intentionally or recklessly interfere with or misuse any safety device or equipment required by law.

Sections 62 prohibits the occupiers of factory from making any deduction from the wages of workers or allow any person in his employment receive any payment from such worker in respect of anything to be done or provided by him in pursuance of the Act. This

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[123] *Charles v Smith & Sons Ltd (1954) 1 ALLER 499.*
[124] Bimbo Atilola op.*cit p.63.*

otherwise means that an employer must not charge his employees for providing safety appliances or equipment required by law. It is therefore possible for the employer or occupier of factory to charge his employees for providing safety equipment which is not specifically required by law.

Where an employer has provided a means or appliance for safety, the person is under a duty to use it even though he has not been ordered to use it by the employer unless there is a prohibition by the employer on its use[125].The Act places the responsibilities for the general administration of the Act on the Minister of Labour. The Minister is empowered to make regulations under the provisions of the Act. But such regulations must be laid before the National Council of Minister and the council may by resolution, approve or reject any regulations laid before it[126].

Section 63 obliges the Minister to submit to the National Council of Ministers, within thirty days after the end of each financial year, a report on his activities under the Act.
Section 64 creates the offices of Director of Factories of the Federation,, Inspectors of Factories and other officers by whatever name called for the purpose of executing the Act.
The section obliges an Inspector to treat as absolutely confidential the source of any complaint bringing to his notice a contravention of the provisions of the Act.

Section 65 enumerates the wide and extensive powers of Inspectors of Factories to enter, inspect and examine by day or night, any factory or any place which he has reasonable cause to believe to be a factory to inspect and examine any document kept in pursuance of the Act.
It is an offence for any person to obstruct Inspectors in the execution of his duties under the provisions of the Act. It is an offence under the Act to contravene or breach any of its provisions. The Act puts the primary responsibility for such contravention on the occupier of the factory. This is because the occupiers have ñcomplete controlò of the

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[125] *Norris v Syndic Manufacture Co Ltd* (1952) 1 ALL ER 935.
[126] Section 67.

premises and can therefore impose their own conditions upon those who enter the premises[127]. Where however, the employee contravenes part viii with respect to duties of persons employed or of a contravention by any person of any regulation or order made under the Act which expressly imposes any duty on him, it is the employee or such other person that shall be guilty and the employer shall not be guilty unless it is proved that he failed to take all reasonable steps to prevent the contravention[128].

Where any person is guilty of an offence under the Act he shall be liable to a fine not exceeding 500 or to imprisonment of a term not exceeding 3 months or both. Section 71 imposes additional penalty of N5,000,000 on the occupier or owner of factory in the event of death or bodily injury to any person in consequence of any contravention of any provisions of the Act by the occupier or owner. It is worthy to note that the above compensation is obsolete because the new law ï Employee Compensation Act 2010 provides for adequate and all encompassing compensation to injured employees. This Act will be discussed later in full course.

Section 78(1) of the Act makes special provisions as to Evidence. From the section, if a person is found in the factory at any time at which work is going on, the person shall until the contrary is proved be deemed as employed in the factory. The sections establish a rebut table presumption of employment and it will be the duty of the employer to rebut this presumption.
Section 87 of the Act explains the word factory and the meaning, this has already been discussed.

Other legislations that provide for industrial safety will be briefly considered. Some of these legislations are;

1. The Constitution of the Federal Republic of Nigeria Cap C 23LFN 2004.
2. The Labour Act, Cap L1 Laws of Federation of Nigeria (LFN) 2004
3. The Petroleum Act Cap PI0 LFN 2004

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[127] *Smith v Cammell Laid & Co Ltd* (1940) AC 242 at 289 – 259, Lord Atkin.
[128] Section 69 (2) of the Factories Act.

2.2.4 The Constitution

The 1999 constitution as amended under Section 16 provides that the Nigerian State is required to direct its policy towards ensuring that ñsuitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment and sick benefits are provided for all citizensò.

ñConditions of work are just and humane and that there are adequate facilities for leisureé .ò

ñThe health, safety and welfare of all persons in employment are safeguarded and not endangered or abused[129]. The Fundamental Objectives and Directive Principles of State Policy contained in Chapter 2 of the constitution are not enforceable or justiciable in any law court, and the above provisions are part of them. The above notwithstanding, it is the duty and responsibility of all organs of government in Nigeria to observe and apply them. More so, the right to the dignity of human person guaranteed under section 34 of the 1999 constitution as amended includes the dignity of labour. The section thus provides;

ñNo person shall be held in slavery or servitude; and No person shall be required to perform forced or compulsory labour.ò Looking at the above provisions and the kind of work some factory workers undergo in this country, it is not in doubt that some factory workers undergo hard labour, all because of unemployment.

It seems that as long as the issue of health and safety of workers remain under the Fundamental

Objectives and Directive Principle of State policy, the Nigerian workers will continue to suffer. The situation is different in countries like India where the issue of health and safety is a fundamental right[130]. Nigeria as a state has ratified conventions 121, 155 and 161 of the international labour organization (ILO) which pertains to the safety and health at work places. Apart from ratifying the African Charter on Human and Peopleôs Rights,

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[129] Section 17 (3) (b) and (c) of the 1999 Constitution as amended.

[130] In the case of *M.C. Mehta v union of India*. It was held that public health and ecology have priority over loss of revenue, therefore, organizations cannot ignore and refuse to implement occupational safety and health measure on the plus that it is non profitable.

Nigeria has gone the extra mile of promulgating the Charter into law. Article 15 of the charter provides that; ñEvery individual shall have the rights to work under equitable and satisfactory conditionsé ..ò In spite of the above, the workers in Nigeria seem to be the ñendangered speciesò[131] and nobody seems to know the end to their trouble.

2.2.5 The Labour Act

The Labour Act Cap LI LFN 2004 in its section 8 provides that;

1. Every worker who enters into a contract shall be medically examined by a registered medical practitioner at the expense of the employer.
2. The State Authority may by order exempt for the requirement of medical examination workers entering into contracts for.

(a) é ..

(b) é

(i) é ..

(ii) In non agricultural work which the State Authority is satisfied is not of a dangerous character or likely to be injurious to the health of the workers.

From the above provision, it is the responsibility of the employer to provide medical examination of every prospective worker, though some workers are exempted. Obviously the reason may be to check whether accepting job offers would not be detrimental to their health.

No matter how good it looks, the medical examination may pose new threats: firstly, expenses are borne indirectly by the workers as in most cases the money is deducted from their salaries. Secondly, would the employer not use this provision to discriminate against people living with HIV/AIDS and denying them their rights to work even when they are qualified? There is therefore a need to protect these categories of workers in industries where their health conditions would not jeopardize their work and other prospective co-workers.

2.2.6 Petroleum Act

[131] Bimbola Oyesola, óSafety at Work Nigerian Workers, the endangered specieò Op.cit p. 1.

Section 12 of the Petroleum Act provides for the safety of the worker in the refinery areas, in connection with crude oil or any refined products. It is mandatory that such workers be provided with suitable protective clothing, equipment and appliances of a pattern approved by the Director of Resource.

Quick operating automatic water showers shall be provided in the vicinity of caustic vessels and pumps and in other appropriate accessible places while eye wash bottles and automatic functions are to be located in strategic and conspicuous locations in the refinery area[132]. All dangerous or moving parts of any machinery shall be securely fenced in such a way that the operator is protected from coming in contact with that part. There must be provision of adequate first aid[133] and emergency medical facilities to deal with all cases arising from any accidents. Where any accident results in the loss of life or serious injury a written notice shall be sent to the Director of Petroleum Resources who may order an inquiry to be conducted by the inspector. In case of any spillage of life or serious injury a written notice shall be sent to the Director of Petroleum Resources who may order an inquiry to be conducted by the Inspector. In case of any spillage of crude oil inside the refinery, precautionary steps shall be taken to prevent any hazard that may arise there from.

The above are a few of industrial safety regulations in Nigeria. It is quite obvious that the Factories Act and other regulations do not make provisions for a lot of issues that characterize the work environment today as it is seen in other countries. There is therefore a great need for the President to sign the Labour Safety, Health Welfare Bill in order to compliment the inadequacies in the laws on safety of industries already discussed.

2.3 Occupational Health and Safety in Nigeria

[132] Sec. 12 (3) & (4) of the Act.
[133] Section 13.

The Occupational Health and Safety (OSH) is a global phenomenon towards ensuring the safety of workers at their work places. This is not only to ensure the health of workers, but also to contribute positively to productivity and overall quality of life of individuals and society[134].

The International Labour conference at its 91st session in 2003 compiled its conclusion in a publication called ñGlobal strategy on Occupational Health and safety[135] where it emphasized the need for nations to adopt comprehensive changes in Occupational Safety and Health at the National and enterprise level.[136]This is necessary because of the result of the magnitude of the global impact of occupational accidents and diseases as well as major industrial disasters, human suffering and related economic cost.

Recognizing the challenges created by the continuous exposure of workers to occupational risks and hazards the ILO adopted convention 161 in 2004[137].This instrument provides guidelines for Occupational Health and Safety services in line with transformation at workplace. Many countries of the world have progressively begun adopting different styles of occupational safety and health instruction for medium sized and large enterprises. But the case is different in Nigeria because it seems Nigeria is yet to embrace this change. This is evident with the delay in the signing of the bill on the Occupational health and safety into law. The Factories Act which is the main Act on Health and safety is obsolete and the signing of the bill titled the Labour Safety, Health Welfare Bill will become a response to the proactive resolutions in the conventions adapted in the light of current scientific knowledge, international practice and international norms.

A legal luminary Ogharanduku Victor in his article óA critique of the Factories Act in Light of Changing Work Patterns, Occupational Safety and health practiceô maintains

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[134] WHO Global Strategy on Occupational Health for All. The Way to Health at Works; Recommendation of the second meeting of WHO Collaborating Centers on Occupational Health 11-14 October 1994 Beijing China.

[135] I.L.O. Global Strategy on Occupational Safety and Health; conclusions adopted by the International Labour Conference at its 91st session 2003.

[136] Ibid.

[137] ILO: Occupational Safety and Health, International Labour Conference 98th session, 2009.

that the emergence of Occupational Health and Safety (OSH) is a broader phenomenon because it includes ña practice in the content of labour management relations, increases the participation of women in paid environment, proliferation of non-factory related jobs, emergence of biological and psychosocial hands, pace of technological development and transferò.[138]

Williams (SAN) commenting on the need for an Occupational Health and Safety law opined thus; ñAn urgent comprehensive review of the Nigerian Law for the purpose of meeting the challenges that abound in the coming millennium is the most important area of our national developmentò[139].

There is no doubt that all these safety legislations (already discussed) have highly fragmented sets of legal protection but there is still a great need for consolidation thus bringing together all statutory provisions. It is believed that this Bill when signed into law will meet the expected need by providing relevant occupational health policies, laws and services for new enterprises and group of employees who are emerging in the enormous non factory related occupations such as agriculture, small and medium scale enterprises.[140]

More so, the emergence of occupations such as teaching, nursing, hospital, laboratory work and the automated clerical offices which were hitherto classified as less hazardous have now been identified as having their `own unique hazards and risks`. Factories Act and other legislations do not cover these occupations and thereby make the workers vulnerable to unsafe and unhealthy practices within the industries. But with a more encompassing legislation in occupational Health and safety, workers in such occupations will be better protected.

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[138]Ogharanduku I.V.,òA Critique of Factories Act in Light of Changing Work Patterns,Occupational Safety and Health Practiceò *Nigerian Journal of Labour Law and Industrial Relations*(2010) Vol.4, No. 2,p.11

[139] Williams R.Text of ñOccupational Safety and Health protection of the National Labour Force: The Constitutional and Legal perspectiveò cited in the Nigerian Journal of Labour Law & Industrial Relations Supra p. 7.

[140]Writerôs view.

The above are few of industrial safety regulations in Nigeria. Enforcement of these safety legislations are always difficult there could be a combination of some factors like ignorance, cultural inhibitors (e.g. sawmill operations) the prohibitive costs of litigation and duration, the technicalities involved in establishing proofò and above all the fear of losing oneôs means of livelihood. All these shall be discussed later in this discourse under compensation and enforcement of the rights of the employee.

2.3.1 The Labour Safety, Health Bill 2012

On the 27th of Sept 2012, the Nigerian legislative Upper chamber the Senate passed a bill seeking to cater for the safety, health and welfare of Nigerian workers. The Bill was titled ñThe Labour Safety, Health Welfare Bill 2012ò. The Bill seeks to protect Nigerian workers from hazards associated with their jobs[141]

The Bill contains 111 clauses and clause 83 deals with offences and penalties. The Bill also seeks to repeal and re-enact the Factories Act 2004 to make comprehensive provisions for securing the safety health and welfare of personnel at work in addition to establishing the National Council for Occupational Safety and Health[142].

This Bill compels employers to pay a fine of 5 million or imprisonment of 3yrs to any person killed or who suffers severe injury resulting from a contravention by the employer[143]

The Bill as an Occupational Health and Safety Bill requires the employer to ensure the adaptation of work to save women at the work place environment. Clause 31 (1) of the Bill[144] provides that an employer shall after being notified by a female employer that she is pregnant should adapt the working conditions of the female employee in such a manner as to prevent occupational exposure. This is to ensure that: ñthe embryo is afforded the same level of protection as required for members of the public and the employer shall not

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[141] http://www Niger Delta heart beat.wix.com/Niger-delta-heart-beat/apps/blog/Nigeria-labour-safety-health-welfare-bill-passed.(Accessed 16/06/15).
[142] Oluwole Josiah Punch Newspaper Report, www punching.com/news/breach-labour safety.(Accessed 16/06/15)
[143] http://www.Niger Delta heart.wx.com/Niger.
[144] Labour safety Health Bill.

consider the notification of pregnancy as a reason to exclude the employee from work" More so, the employer is also required by this law to ensure that any female employee that is pregnant or nursing a baby is not exposed to ionizing radiation at work place. Clause 83 provides in part thus:ñAny employer who fails to comply with any of the provisions of clauses 29, 30, 31, 32, 33, 34, 35, 36 and 37 of this bill relating to the duty of the employer commits an offenceò.[145]

The punishment for the breach of the above section is imprisonment for a term not less than one year or to a fine of not less than 500,000. Where the employer is an individual, he may be liable to both fine and imprisonment and in a case of a corporate body in addition to a fine of less than two million naira. Each of the directors or managers of the body shall be liable to imprisonment for a term not less than one year.

More so, the Bill makes provisions for the adequate construction and disposal of machinery[146]. The clause stipulates that any person who manufactures sells or lets on hire any machine that does not comply with the requirement of this clause commits an offence. The penalty for the breach of section 52 is N50,000 (fifty thousand for the first case of non compliance and N100,000 (One hundred thousand naira) for every subsequent case of non compliance or N50million for every subsequent case.

The Bill as a protective provision and more encompassing than Factories Act is a positive step in right direction as regards the rights to the health safety and welfare of the employees both in private and public sectors of Nigeria.

2.4 History of Industrial Safety in America

Before the late nineteenth century, little was known about industrial safety in America. Pre-industrial labourer faced risk from animals and hand tools, ladders and stairs[147]. Americans modified the path of industrialization that had been pioneered in Britain to fit

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[145]Ibid Clause 83.
[146] Clause 53 of the Bill.
[147] U.S. Department of Commerce Bureau of the census. Historical statistics of the United States. Colonial Times to 1970 (Washington, 192).

the particular geographic and economic circumstances of the American. The first law requiring the guarding of hazardous machinery was enacted in Massachusetts in 1877 in response to widespread indignation and concern over an especially sympathy arousing type of injury ï the fingers of young girls were cut off or mangled by the gears of spinning machines in textile plants[148].

Other laws followed, one of them was the Federal Employersô Liability law. In 1908 Congress passed federal employersô liability law that applied to rail roadôs workers in interstate commerce and sharply limited defenses an employee could claim. The intent of this type of legislation was to make it easier for the accident victim to obtain an award when employer negligence could be shown. Two years later in 1910, New York became the first state to pass a Workmenôs Compensation Law. Samuel Gompers, leader of the American federation of labour had studied the effects of compensation in Germany[149]. He was impressed with how it stimulated business interest in safety, and according to him between 1911 and 1921 forty-four states passed compensations laws.

Employers became interested in safety and in 1913 companies founded the National Safety Council to pool information[150]. Government agencies such as the Bureau of Mines and National Bureau of Standards provided scientific support while Universities also researched safety problems for firms and industries[151]. Between the World War 1 and World War 2 there was a steady decline in accidents rates. Yet, the pattern of improvement was uneven because safety still deteriorated in times of economic boom when factories mines, and railroads were worked to the limit and labour turnover rose. After the World War II newly powerful labour unions played an increase important role in work and safety. In 1960s, however economic expansion again led to rising injury rates and the resulting political pressures led Congress to establish Occupational Safety and

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[148] UK Singh et al ó Safety Security and Risk Management, (New Delhi) APH Publishing Corporation 4435-36/7, Ansari Road Darya Ganj New Delhi ï 110002 2009, p. 66.
[149] Fishbank and Kantor, A Preclude cited in the History of Workplace safety in the United States, 1880 ï 1970 Supra p. 3.
[150] Ibid.
[151] Ibid.

Health Administration (OSHA) and the Mine Safety and Health Administration in 1970. The works of these agencies have contributed to the continuing reductions in work injuries after 1970[152].

2.5 History of Industrial Safety in India

It could be said that India places great importance on the welfare and well being of the citizens. This was because the enlightened public opinion inspired by human considerations that led to the first factory legislation which took effect from 1 July, 1881[153]. The Act since 1881 had undergone major amendments in 1891, 1911, 1922, 1948, 1976 and 1987. The legislation which gave a limited protection to children subsequently and progressively enlarged the range and depth of coverage of the different aspects of the working conditions with increased emphasis first on safety and subsequently also on health of worker.

The Constitution of India has the basic statutory requirement of industrial/occupational safety. There are also a plethora of statutory Acts, Rules and Regulations which spell out the mandatory requirements to maintain a minimum level of occupational safety and health standards[154].

Occupational/Safety industrial and Health laws in India are provided in the constitution of India and in other laws in the land. Article 21 provides for the protection of life and personal liberty of the citizen. In interpreting this section of the constitution, the courts in India seems to be liberal. According to Lt Col Harsha Lakshmi Narayana, ñthe courts in India have been liberal in its interpretations and have encompassed various issues in their judgments which highlight that occupational safety and health is necessary for protection of lifeò.[155]

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[152] Ibid.
[153] R.K. Jain et al óIndustrial safety, Health and Environment Management System Op.cit p. 521.
[154] P.Chaturvedi. , O*ccupational Safety Health and Environment and Sustainable Economic Development Concept publishing company* supra p.6.
[155] Lt. Col. Harsha Lakshmi Narayana,ò*Legal Framework for Occupational Safety and Health in India* supra.

The supreme court of India held in *M.C. Mehta v Union of India* that public health and ecology have priority over loss of revenue; therefore, organizations cannot ignore and refuse to implement occupational safety and health measure on the plea that it is non-profitable[156]. The apex court in *M.K. Sharma v Bharat Electronics Ltd*[157]held that checks and safeguards should be adopted to guard against the ill effects of radiation of x-rays, necessity of pollution free air and water for full enjoyment of life[158]. Other Articles in the constitution of India that provide for the safety of the citizens are; Article 24, Article 39 (e) & (f) and Article 47 of the Indian constitution.

Other Acts in India also make provisions for industrial safety example.

- Apprentices Act, 1961 ï section 14
- The Atomic Energy Act, 1961 ï Section 17
- The Child Labour (Prohibition and Regulation) Act 1986 ï Section 13
- The Contract labour (Regulation and Abolition) Act, 1970 ï Section 16 to 19
- The Factories Act, 1948 ï sections 11 to 49 etc.

Under section 37 (4) of Factories Act of 1948, dismantling without making proper safety arrangement such as cutting as was undertaken in the premises was an offence. That was the decision of the court in *Mahadeven Balasubramanian v State of Tharkhand*[159].The Act also provides that a machinery or part thereof is dangerous if in the ordinary course of its work danger may reasonably be anticipated from it. Especially, when working without protection taking into account the various factors incidental to its working including the carelessness of the workman[160].

Under section 21 of the Factories Act the observance of safety measures cannot depend on the occurring of any particular accident but it depends on whether such safety measures are indispensable, the nature of machine and also the foreseeable possibility of

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[156] 1987 AIR 1086.
[157] (1987) 3SCC 231: AIR 1987 SC 1792.
[158] *Subash Kumar v State of Bihar,* AIR 1991 SC 4201 1991 (1) SCC 598.
[159] 2002 (94) FLR 977 K.M. Singh et al as was cited in *Glossary of Labour Laws An Analysis of Legal Terms V.V. Giri National Labour Institute 2008 p. 320.*
[160] *J.B. Mangharam and Co. v Employee's State Insurance Corporation,* 1970 (1) LLJ 460.

the work-men in the factory coming into contract there within the course of their duties deliberately or accidentally. The court applied the above provision in *E.S.I Corp v Shree Sita Ram Mills Ltd*[161].

More so, the Bureau of Indian Standards (BIS) has also published Indian Standards (IS) 15001: 2000 Indian Standard on Occupational Health and Safety Management Systems ï Specification and Guidance for Use which is adapted to the Indian needs. Also, the National Building Code, 2005 published by the BIS specified the safety measures that have to be adopted in construction[162]. According to *Lt Col. Harsha Lakshmi Narayana*[163] it (construction) is the second largest occupation provider after agriculture and provides livelihood to almost 10 percent of the countryôs population. It is no gainsaying that all those Acts discussed above and many others[164] have one objective and that is to ensure that employers take all practicable steps to guarantee the health and safety of the employees at work in India.

[161] 1978 Lab 1C 1220 (Bam) .
[162] Mejie etal , " Strategy to Enhance the Standing of Indiaôsô Construction Industry: Review of Strengths and Weaknesses of Existing Systems and Technology,ò C*ivil Engineering and Construction Review, (2005)* as was cited in Pradeep Chaturvedli Supra p. 12.
[163] Ibid.
[164] The interstate Migrant Workmen (Regulation of Employment and constitutions of service) Act 1979 ï Section 16. The Mines Act 1979 ,Section 19 to 21, The Plantations Labour Act, 1951 ï Sections 8 to 18.

CHAPTER THREE: LIABILITY OF THE EMPLOYER FOR BREACH OF INDUSTRIAL SAFETY LAWS

This chapter focuses on the liability of the employer when industrial safety laws are breached. The liability of the employer is discussed under two main headings civil liability and criminal liability. Civil liability can be primary/personal liability, secondary/vicarious liability and so on. Criminal liability on the other hand includes corporate manslaughter and personal crimes. The meaning of an employer will be considered first before the liability of the employer is delved in.

3.1 Who is an Employer?

The Blackôs Law Dictionary defines an employer as a person who controls and directs a worker under an express or implied contract of hire and who pays the workersô salary or wages[165].

The courts have defined an employer as:

a. an employment agent, *Alderton v Burgon*[166]

b. A commission agent, *Road Transport Industry Training Board* v *Ongaro*[167].

c. An associated company of a personôs last employer, *Lucas v Henry Johnson*[168].

d. An organization of the self-employed and small business, *National Federation of the Self Employed and small Business v Philipott*[169].

But in contrast the term has been held not to include: the secretary of state, *The Secretary of State for Employment v. Mann*[170].

The Workmen Compensation Act defines an employer thus;

An employer includes:

(a) õThe Government of the Federation of Nigeria and of any states
(b) Anybody of persons corporate or unincorporated and legal personal representative of a decease/employer; and

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[165] Bryan A. *Garner Blacks Law Dictionary* 9th Edition Op.cit p. 604.
[166] (1974) R.T.R 422.
[167] (1974) I.C.R 523.
[168] (1986) I.C.R. 384.
[169](1997)IRLR 340 at 315.
[170] (1996) IRLR. 4 at 220.

(c) Where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprentice, the later shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; and

(d) In relation to a person employed for the purposes of this Act, be deemed to be the employer.[171]

The Employers Compensation Act also defines an employer thus;

> ñemployerò includes any individual, body corporate federal, state or local government or any of the government agencies who has entered into a contract of employment to employ any other person as an employer or apprenticeò.

From the above definitions an employer can either be a natural person-human being and or an artificial person ï which can be a body corporate or an unincorporated body.

3.2 Civil Liability of an Employer

The liability of an employer in breach of industrial safety laws is to be discussed under the following headings:-

(i) Primary liability/personal liability

(ii) Secondary liability/vicarious liability

At common law, liability may arise under either contract or tort: the original formulation of the duty of care which an employer was said to owe its employees arose out of and was allied to the contract of employment.

Presently, where as the tortuous duty is expressed as and is limited to, a duty to take reasonable care for the health and safety of employees (and arguably those in analogues to employees,) a contractual claim may be founded not just on a contractual duty to the same effect. It can be founded but also on the (automatically) implied contractual term not so to act as without a good reason to be likely to destroy or damage the relationship of trust and confidence between employer and employee[172].

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[171] Workmen Compensation Act Cap W6 Supra.

[172] B. Cotter . QC et al *Munkman on Employer's Liability* Op.cit p.109.

The responsibility of a master arising from the master and servant relationship takes two forms but they are not necessarily mutually exclusive and they must be kept distinct.
The first is best referred to as the ñpersonalò liability of an employer or primary liability which refers to duties which are imposed directly upon an employer as such by common law or statute[173].
The second is vicarious liability or ósecondaryô liability by which an employer is liable for the torts committed by its employees which have a sufficient close connection with the employeesô employment. The all important duty of an employer is to take reasonable care for the safety of his worker and these duties are generally fixed by the contract itself, partly by the common law, and partly by the statute. The general law of contract of employment ordinarily imposes the duty on an employer to take reasonable care to ensure the safety of his workmen in the course of their duty. While statutes address specifics areas of the law of employment such as the provision of safety and protective devices, safety environment and so on.

3.2.1 Primary Liability

Primary liability may emanate from contract or tort and an employer is duty bound in both cases to take reasonable care for the safety of its employees.
It is note worthy to state that the fact that the employment relationship gives rise to a duty of care in tort today overshadows the existence of a parallel duty in contract. Thus many of the earlier cases decided before the law of negligence was developed held that the employment duties rested on the contract of employment[174].

In *Davie v New Merton Board Mills ltd* liability to an employee was regarded as arising in tort[175], although in some cases liability to an employee has been held to be based on contract.[176]

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[173] *Majrowski v Guy's & St. Thomas NHS Trust (2005) QB 848*.
[174] Lord Hershell in *Smith v Baker & Sons* (1891) AC. 325 at 365.
[175] (1959)AC 604.
[176] Viscount Summons ibid.

But in Barber *v Somerset County* Council. Lord Rodger of Earls Ferry was concerned about the interaction of the contract of employment with the duties of the employer[177]. The contract specified the duties to which the employee agreed that a complaint that he was being asked to do too much (with consequential health effects upon him) solely by being asked to fulfill the requirements of his contract might cause a conflict of approach between contract and duty.

But generally it may seem that employees rely upon tortuous remedies. This could be because to do so may avoid the uneasy interaction between express and implied terms of the contract of employment. Thus as was demonstrated by the conflicting approaches of the Court of Appeal in *John Stone v Blooms Bury Health Authority*[178]

3.2.2. Doctrine of Common Employment

The doctrine of common employment maintains that a master is not liable for any injury sustained by a worker arising from the normal course of its duty if the injury was caused by a fellow worker. The doctrine was propounded in 1833. This situation was not too good for the worker and in 1948 the doctrine was abolished by the British Parliament. But in the Southern states of Nigeria, until the doctrine of common employment was abolished, a master was not liable to any injury sustained by a worker arising from the normal course of his duty if such injury was caused by the servant (fellow-worker). This doctrine gave the workman a remedy if he suffered injuries due to the defect in ótheway, works, machinery or plantô or from the negligence of some manager acting as the agent of the masters.

This doctrine made its first in road in Employerôs Liability Act 1880 and this Act gave the workman in *Smith v Baker & Sons* his remedy when he was injured as a result of the negligence of a signalman. The worker succeeded apparently on the basis that there was a ñdefect in the wayò in other words the system of work[179].

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[177] (2004) UKHL 13.
[178] (1992) QB 333.
[179] (1891)AC 325 at 365.

In Nigeria, the Law Reform (Torts) Law 1961[180] formally abolished the doctrine of common employment, bringing the law in Lagos in line with what had been the position in the rest of the Southern States.

In *Sunday Ogunniyi v Smith & anor* Ayorinde J. affirmed that the doctrine of common employment no longer existed in Oyo State by virtue of section 13 of the Stateôs Torts Law[181].

But in the Northern States of Nigeria, the doctrine was abolished in 1988 when it was abolished nationwide by section 1 of the Labour Act (Amendment Act 1988[182]. In the case of *Amanambu v Okafor & anor* the court had said that although the doctrine was not specifically pleaded in that case. It had ñto take judicial notice of the existence of the doctrineò and ñto apply it to the law of Benue State which includes the common law doctrine of common employmentò.[183]

Also in *Agunanne v* NTC *ltd*, a staff passenger was injured by the negligent driver. His claim was resisted by the company on the plea of the doctrine of common employment. Iguh, J. (as he then was) held that where a tort was committed in one state and an action was commenced in another the proper law to apply was that of the state where the tort occurred. Thus, the doctrine of common employment was applied since it was still extant in the Northern States as at that time.[184]

A part from the law governing the duty of the master to his servant, a master may also be liable for injury caused to any person under the normal law of negligence if such injury was due to his failure to take care for the safety of others. This duty to take care seems to have been specifically applied in the law of negligence.

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[180] Every State in Nigeria has an equivalent statute, but this one applies only to Lagos State
[181] (1983)21 F.N.R 200.
[182] Decree No. 27 of 1988 now S. 12 Labour Act Cap L 1 Laws of Federation of Nigeria 2004.
[183] (1966) All N.L.R.205.
[184] (1979)2 F.N.R.144.

In the Supreme Court judgment in Patrick *Abusominan v Mercantile Bank of Nigeria Ltd*[185] the court adopted the ñneighbour principleò enunciated in the case of *Donoghue v Stevenson*[186]where due care is taken by the employer and the workman still sustains injury through the inherent risk of the employment, it seems that workman may not recover damages for tort against his employer because the employer is not liable at common law in the absence of negligence[187].

The 1961 Law[188] abolishing the doctrine of common employment provides that any term in a contract of employment purporting to exclude the liability of the employer with regard to his liability for injuries sustained by his worker through the default of a fellow worker is void as being against public policy[189].
According to Munkman in reference to the parallel English Act. The effect of the Act is that the employers personal liability and his vicarious liability have been integrated into a single general duty. The employer, acting personally or through his servants or agents must take reasonable care for the safety of his workmen and other employees[190].

There were three main specific duties of the employer to his employee. The duties are as specified in the case of *Wilsons & Clyde Coal & Co Ltd* v *English* the duties are provision of competent staff, adequate plant and a safe system work.

3.2.3. Competent Staff

The courts normally insist that the employer or master must personally select his staff. The duty was developed in response to the doctrine of common employment.
According to Emiola[191]the duty is not fully discharged merely by the appointment of persons who by education and certificate are adjudged to be ócompetentô by the masterò.

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[185] (1987) 3 NWLR (PT. 60) 196 SC.
[186] (1932) AC 362, 580, (1932) All E.R. p 368.
[187] Law Reform (Torts) Law 1961. S 7 (4) (b), (5) Occupiers Liability Act S. 2 (4) (b); *Read v. Lyons* (J) & Co. Ltd (1947) AC 156, (1946) 2 All E.R. 471.
[188] That is Law Reform Tort Law 1961.
[189] Section 18. Interpretation Act 1964.
[190] Law Reform (Personal Injuries) Act 1948 Cited by A. Emiola. Nigeria Labour LawOp.cit p. 173.
[191]A.Emiola Op.cit p.174.

In the case of *Western Nigerian Trading Co Ltd v Busari Aja* it was held that it is the employerôs duty at common law not only to instruct the worker but also to follow up by reasonable supervision.[192]

The court of Appeal in Federa*l Super Phosphate Fertilizer & co v Abraham Otaru* where an infant of eighteen years was injured by sulphuric acid after a casual instruction, and without telling the youth what to do in the case of an accident occurring. The court held the employers habit especially so because ña greater burden is imposed on the employer where the employee is an inexperienced personé .. It is not sufficientò said Akpata, JCA, óto assume that the employee ought to be able to copeô with the situation[193].From the above dicta, it could be inferred that where experience is lacking or inadequate or where the employee is an inexperienced person, that it behooves on the master to give adequate instructions as may be necessary to offset the servantôs inexperience or deficiency in maturity.

It is worthy to note that an employer remains liable if he delegates the performance of his duty to another and the duty is breached. This is because the duty owned to the employee is not delegable. In *Ogunniyi v Smith* where the duty to supervise was delegated, the employerôs duty had not been discharged[194]. In *Hudson v Ridge Manufacturing Co. ltd* an employee was injured by a fellow worker. The employers were aware of the workerôs conduct and had frequently rebuked the offending worker[195]. In action by the injured employees for damages for the companyôs negligence; the employers were held liable for the breach of their common law duty to provide competent workmen.

From the above, one may deduce that an employerôs failure to take a positive step where an employee by his habitual conduct constitutes a source of danger to his fellow workmen will amount to an act of negligence on the part of the employer.

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[192] (1965) NMLR 178.
[193]Op.cit p.29.
[194](1983) 21 F.N.R. 200.
[195] (1957) 2QB 348

3.2.4. Tools and Plant

The employer owes the employee the duty to provide adequate plant, appliances, equipment and premises. It seems that where the employer has knowledge of the dangerous character of the tools or plant he will be liable to his servant even if the tools were purchased from a reputable dealer. In *Taylor v Rover co. ltd* it was held that the manufacturer was not guilty of any failure to take reasonable care in respect of the supply of steel, but that the employer had been negligent, the foremen had discovered the defect for four weeks earlier but kept the chisel in use. Thus it was the failure of the employer to withdraw the tool despite the notice of the danger it constituted that caused the injury.[196]

Where however the employer had taken reasonable care in the purchase of the tools, from standard tool dealers, they would not be held liable for any defect in the tools without further evidence of negligence[197].

3.2.5. Safe System of Work

The third limb of the primary duty of the employer at common law is ósafe system of workô. According to Lord Greene in *Speed v Thomas Swift co. Ltd.*

A system includes,

> According to circumstances, such matters as the physical layout of the job ï the setting of the stage, so to speak ï the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise: such modifications or improvements appear to me equally to fall under the head of system[198].

It behooves on the employer not only to discharge his duty to provide a safe system of work but also to give his workers proper instructions and reasonable supervision. In *Western Nigeria Trading co Ltd v Busari Ajao* Fatayiï Williams J. held that an employer is under an obligation not only to provide safety devices but also to give instructions

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[196](1966) 1 W.L.R.1491.
[197] House of Lords Decision in *Davie v. New Merton Board Mills Ltd*(1959) 1All ER 346
[198] (1943) 1 All ER 539,542 (cited in E. Uvieghara in *Labour Law in Nigeria*)Op.cit p.156.

ñfollowed by reasonable supervision[199]ò. In providing a safe system of work whether the employer will be in breach of duty or not depends on the circumstances of each case.

In *Latimer v AEC ltd* the floors of a large factory was flooded as a result of a heavy storm and oily cooling mixture mixed with the flood water and the floors became slippery. The employer took all available precaution to prevent an injury resulting there in. But an employee who was loading a heavy duty barrel onto the trolley slipped and injured his ankle. It was held at first instance that the employer would have closed the factory until remedial steps had completely removed the danger. On appeal, the Court of Appeal reversed the judgment and that was upheld by the House of Lords.[200] But in *Okogele v Associated Metal and Allied Works Ltd* when an employee was injured while working on a power pressing machine and the machine gave way and crushed his right hand index finger which had to be amputated. There was evidence that particular machine was tested in the morning of the accident but there was still evidence that many other employees had similar injuries. Oshodi J. said. ñIn considering the system in the defendantôs factory one has to consider the sequence in which the work is to be carried out, the provision in proper cases of warnings, and notices and the issue of special instructions[201].

In *George Wimpey& Co (Nig) ltd v Ezebuiro* the plaintiff was asked to loosen four bolts holding the arm of a pail loader while in the process, the arm fell on him against the axle of the loader and he suffered severe injuries to the pelvis and other parts of the body. The Court of Appeal upheld the trial judge who held the employer negligent in not providing a proper support for the arm[202].

It has been observed, that the concept of ósafe systemô has been extended to cover other areas incidental to work e.g. the layout of the work, working outside the employers immediate control, team arrangements and many other areas associated with the work. In

[199] Supra.
[200](1953)AC 643.
[201] (1978) 7/CCH 2003 CJ 1269 at 1276.
[202]Federal Court of Appeal Judgments, Kaduna Division, 1980 p.161 as was cited by E .E. Uvieghara Op.cit p.155.

Bradford v Robinson Rentals the employer was liable for the injuries sustained by an employee who was sent out on a long journey under a wintry condition without adequate precautions.[203]

The duty of the employer to take care and maintain a safe system of work cannot be excluded by an employer following a certain trade conduct which has been repeated for a long time. In *General Cleaning Contractors Ltd v Christmas* a plaintiff window clearer of considerable experience fell when the lower and upper sashes closed up trapping his fingers.[204] The sill method was the practice in the trade, and yet the company was held liable to the worker for the injured[205]. From the above decision, it seems that a safe system of work was not provided by the employer thus the defence of general practice or trade practice could not avail them. Therefore, for a trade practice to qualify as a defence, it seems that such trade must be approved as such by the court and experts competent to give judgment on it. The duty to provide safe system of work extends to the provision of protective equipment. Even when the employee/workman accepts an employment which contains inherent risks, the employer will still be held liable in case of a breach. Thus the decision of the House of Lords in *Smith v Baker* maintained that the need to provide protective equipment for hazardous operations is fundamental[206]

Where however the protective equipment are provided the employer may still be held liable if proper instructions are not given[207].Where however the employer provides a safe system of work by providing safety devices, and necessary instructions given but the worker fails or refuses to use the safety devices or follow the instructions the employer/master will be exonerated from all liability where the refusal to use the device is the sole or major cause of injury. This was the decision of the court in *Quaclast (WolverHampton) ltd v Haynes*. The House of Lords held that the employers were not

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[203] (1967) 1 All E.R.267.
[204] (1953) A. C.180.
[205] This is the method whereby cleaners stand on the sill, supporting themselves by holding on the window sash.
[206]1981 A. C.325.
[207] Western Nigerian Trading Co Ltd v Ajao supra

liable for the injury received by an experienced workman who was splashed on the foot with motion metal because he would not wear the protective spats which were made available to him by his employers.[208]It is important to know that when disabled persons are employed in non dangerous operations, steps should be taken in providing them with safety devices even when the work they are involved in does not involve dangerous operations. *Paris v Stepney Borough Council*[209].

3.3 Employers Duty under the Factories Act

Although the Factories Act[210]has been discussed in the previous chapter, it is necessary to outline the duties hereunder.

(i) Compulsory Registration of Factories[211]

(ii) No over crowding[212]

(iii) Fencing of Dangerous Equipment[213]

(iv) Coverage of vessels contracting dangerous equipment[214]

(v) Adequate training of any person assigned to operate the machine[215]

(vi) Safe access into the factory[216]and so on.

The duty of care under the Factories Act is more onerous than the ordinary duty of reasonable care required by common law. The court in *A.C.C.& C(Nig) Ltd v Bamigboye* held that the failure of the employer to carry out the duties outlined in the Factories Act amounts to negligence, which in turn attracts damages[217]

3.2.1 Secondary Liability/Vicarious Liability

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[208] (1959)2All ER,1959, 2 W.L.R 510;also the decision in *McWilliams v William Arrol* 1962 1 All E.R. 623.
[209] (1951) A.C. 367; (1951) 1 All E.R. 42
[210] ibid.
[211] Sec. 1-3
[212] Ibid Section 8& 9
[213] Section 18.
[214] Ibid s.21
[215]Ifere vTruffods, Federal Phosphate v Otaru (Op.cit)
[216] Factories Act S.27
[217] (2005)17NWLR 275.

The doctrine of vicarious liability arises purely from the relationship of employer and employee or the relationship of principal and agent but the doctrine is not dependent on the test control. This means that it does not depend for its application on the theory that he who controls the actions of the employee must bear the consequential liabilities arising from those actions. Example parents, guardian or teachers being held vicariously liable for the torts of their wards or pupils as the case may be. For an employer to be vicariously liable, the question will be whether there is a sufficient connection between the act of the employee and the employment. According to Barry Cotter et al. The act must be so closely connected with what the employee is authorized to do that it could rightly be regarded as a mode even if an improper one, of doing it[218]ò.

In the English case of *Lister v Hesley Hall ltd* Lord Millet views the issue of vicarious liability in a broader manner by saying that it was a specie of strict liability best understood as ó a loss distribution device[219] he concluded by stating that (i) The critical matter is the closeness of the connection between an employees duties and his wrong-doing, and not some fiction based on implied authority and (ii) that therefore where there is such connection it is immaterial whether the employees act in question was unauthorized or expressly for- bidden by the employer or civilly or criminally illegal[220]ò. The above decision by the foreign courts broadens the issue of vicarious liability whether it is the workers wrong or a more criminal act than usual; a test of sufficiently close connection addresses the issue of liability of the employer.

In Nigeria, although the doctrine of vicarious liability has not developed as it is in foreign countries the courts seem to consider some reasons before holding the employer liable for the acts of his servants. According to Ogunniyi there are two reasons that are usually adduced for the doctrine of vicarious liability thus;

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[218] B. Cotter in *Munkman on Employers Liability* Op.cit p.485.
[219] Paragraph 69-79, the above approach was all taken by the Canadian supreme court in *Bazely v Curry*(1999) 174 DLR (4th) 45 and Jacob v Griffti (1999) 174 DLR (4th) 7.
[220](2001)UKHL22,(2002) (AC 215).

(i) ñthe first is that the employer, having initiated or created the situation which places the employee in a position to commit the harm, should bear the ensuing loss.

(ii) The second is that the employee, having regard to his position as an under-dog, will be unable to meet any substantial claim for damages ï where as the employer is in a better position as he will normally have the financial resources to do so, or at least, will be insured against such contingencies[221]ò.

In the Court of Appeal decision in *Alfa v Atanda* the court held thatit is an established principle of law that a master is saddled with the responsibility to a third party for wrongful acts of his servant committed in the course of employment.[222]

Another reason which has been advanced as justification for the application of the doctrine of vicarious liability is the concept that ðhe who takes advantage of a situation must be prepared to accept the risk emanating there from. Diplock L.J. in *Ilkiw v Sameuls* said; ñif he delegates the performance of the acts which give rise to this duty to his servant he is vicariously liable if the servant fails to perform it. In this sense he may be said to delegate the duty though he cannot divest himself of it, as his continuing vicarious liability shows[223]ò. Vicarious liability doctrine is extended to the intentional acts of the employee in the course of this employment. In *Mattis v Pollock* (t/a Flamingos Night Club) the court held that an assault deliberately carried out by a doorman, off the premises, who had first gone home to arm himself, and then attacked a person believed to have been a customer of the club with whom he had an altercation was one for which the Night club was liable[224].

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[221] O. Ogunniyi, Nigerian Labour and Employment Law in Perspective Supra p.193.
[222] (1993) 5NWLR 296,729 at 733.
[223] (1963)1WLR 991 at 1005.
[224] (2003) England and Wales Court of Appeal (EWCA) CIV.887 also the decision in *Hawley v.Leisure Ltd(2006)EWCA CIV.18.*

3.3.2. Course of Employment

The doctrine of vicarious liability can only be adduced if the act of the employee was done in the course of his employment and this does not really mean during the hours of his employment[225].

In Salmond on Torts the test stated was as follows:

> ñ...the master is responsible for acts actually authorized by him; for liability would exist in the case, even if the relation between the parties were merely one of agency, and not one of service at allé .. On the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized act of the mode of doing it, but is an independent act, the master is not responsible; for in such a case, the servant is not acting in the course of employment but has gone outside of itò.[226]

From the above it seems that for an act to be in the course of employment that the act must be an authorized and if not authorized, the act must be so closely connected with the act which he (the employer) has authorized, that they may be regarded as improper or wrongful modes of doing the authorized acts.

A milkman who had been instructed never to employ children to assist him in the distribution of milk but did so was acting in the course of his duty of distributing milk[227].
In *Innocent Okafor anor v John Okiti-Akpe*, where the master of the driver specifically prohibited the act which gave rise to the action and did not directly acquiesce in the breach of the order the Supreme Court upheld the judgment of the High Court which held the company vicariously liable for the act of its employer - the driver.[228]

3.3.3. Vicarious Liability for Non Employees

An employer is not in general liable for the negligence of an independent contractor[229] but where the employer is subject to a primary duty of care the employer will be liable. In *Mcdermid v Nash Dredging and Reclamation Co. Ltd* an employee of the defendants was working on a tug owned by a Dutch company under the control of a Dutch captain employed by that company. As part of his work the claimant would untie mooring lines

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[225] *C.F.A.O. v Ikpeazu* (1966) NCCR 254-262.
[226] 18th Edition,Pp. 437-438.
[227] *Rose v.Plenty* (1976) (All ER. 97).
[228] (1973)IMNLR 317;(1973)25Sc 49.
[229] *Hillyer v Barth Hosp. Gov. (1909) 2 K B 820.*

and would give a double knock when the ropes were cast off. On one occasion, the captain pulled away without waiting for the signal injuring the clamant in the process. The House of Lords held the employer liable not vicariously but personally because a primary duty was breached.[230]

Other circumstances where an employer will be liable for the tortuous act of an independent contractor are:

(i) If the employer authorizes the independent contractor to commit the tort[231].

(ii) Where the employer is in control[232]

(iii)Where the worker forms part of the workforce[233]

In *Marshall v. William Sharp & Sons Ltd* where a quarry operator was held vicariously liable for the negligence of an electrician, (who the Law Lords considered an independent contractor) in part because he formed part of the defendersô workforce and was on call to the defenders[234]. In this case the terms of the contract between the employer and the contractor to whom he is transferred may be relevant to whether a transfer has occurred[235].The principle of vicarious liability can also be extended to persons who are not strictly employees at all. The fact of control alone seems to be enough to make the user vicariously liable. *Marshall v William Sharp*[236]

In *Denham v Midland Employers' Mutual Assurance ltd* the issue was which of two mutually exclusive liability insurance policies covered damages which an employer was liable to pay. Payment in this case was to the widow of an employee who was killed while he was working under specific direction of engineers engaged by the employer to do work on their land[237].

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[230][1986]3.W.L.R.45.
[231] (1987) AC 906, HL .
[232]*Eilis v Sheffleld Gas Consumers co (1853) 2 E & B 767.*
[233] *Morris v Breaveglen Ltd(t/a) Anzac Construction* Co, (1993) ICR 766, CA.
[234] (1999) SLT 114.
[235]*McConkey v Amec Plc (1990) 27 Con LR 88* (cited in Barry Cotter QC et al 'Munkman on Employers liability) Supra Pg 153.
[236]Op.cit p. 20.
[237] (1955)2QB 437.

Lord Denning in deciding the case said that much of the difficulty arose out of the nineteenth century conception that a servant of a general employer may be transferred to a temporary employer so as to become for the time being the servant of the temporary employer. Although the conception as a very useful device to put the liability on the shoulders of one who should properly bear it, but it did not affect the contract of service itself. The law lord went on to say that no contract of service could be transferred without the servantôs consent but the general employer simply told the employee to go and do some particular work for the temporary employer and he had gone.

But in *Visa systems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd* a different view was held by May L.J. in this case a man, Strang was working as a fitterôs mate to a fitter contracted to a second firm. Returning from an errand he crawled through a section of ducting, which he should not have done, which then moved so as to activate the firmôs sprinkler system, causing damage. Both the fitter to whom he was mate and the supervising fitter had the responsibility of controlling Strangôs actions. Both were held equally responsible. The above decision in *Visa systems'* seems not to mean that it will be usual for two employer each to be held liable for the negligent act of someone who whilst an employee of one is working principally for the other[238].

3.3.4. Absolute Liability for the Acts of Independent Contractors

Where some statute imposes a personal duty on an employer he is more likely to be held liable for the acts of his independent contractors. Some statutes even impose absolute liability on the person commissioning an independent contractor with regard to the payment of compensation to an injured workman under such contracts. The Employers Compensation Act 2010 in its section 44 (2) extends liability to the principal in the execution of the work of an independent contractor[239].

The National Social Insurance Trust Fund Act 1993 makes a provision in respect of deductions of contributions to the fund of employees of an independent contractor vis-à-

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[238] (*2005) 4 ALL ER 1181.Hawley v Luminar Leisure Ltd (2006)EWCA Civ18.*

[239] The Act will be discussed fully in the subsequent chapter.

vis the principal. In section 10 (3) of the Act, the owner of a business establishment is made the ñemployerò of the workman in the services of his independent contractor for this purpose.

Where an independent contractor commits any act on the highway, which causes injury or damage, the principal is liable whether the principal/employer has knowledge of the act or consents to it.[240].

Moreover, where the operation of the independent contractor is regarded as extra hazardous, the employer who commissions the work will be vicariously liable for any resulting damage or injury to another person. In *Okafor & ors v Matthew Mbukwu*a woman was killed, a day after she gave birth to a child, by the fall of a palm tree felled by the second and third defendants who were employed by the first defendant. The first plaintiff sued for damages under the fatal Accident Act 1846 for negligence of the defendants, and Kaine J. held that although the second and third defendants were independent contractors, the first defendant, who was their employer was vicariously liable for their negligence not only because he delegated a statutory duty but also because the work they were engaged in was a dangerous or extra hazardous act.[241]

It is also important to note that to qualify as an extra-hazardous operation, the operation must be intrinsically dangerous[242].

3.4 Employer's Criminal Liability

The general principle of criminal law is that a person cannot be guilty of an offence unless he has committed a positive act or an overt act prohibited by law, or has failed to do some act as provided by the law. Thus for a crime to be committed there must be an act or an omission to commit an act otherwise known as actus reus and then the state of mind to commit the act or the intention to commit the act which is the mens rea.

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[240] *Holiday v National Telephone Co. (1899) 2 QB 392*.

[241] (1962)6ENLR 143.

[242] *Balfour v Batty-King (Hyder*& Sons Ltd) (1957) 1 ALL ER. 156 (1957) 2 W.L.R 84 *Honeywell & Stein Ltd v Larkin* Brothers Ltd (1931) 1 KB 191. (1933) ALL E.R. Rep. 77.

The basic elements for any criminal liability is embedded in the Latin Maxim, *Actus non facitreumnisi mens sit rea* meaning, ñan act does not make a man guilty of a crime, unless his mind is blame worthy[243]. In the same vein, an employee / servant will not be liable where he commits a crime unless, he can prove to have committed the crime in the execution of his official orders. Emiola maintains that where the act or omission of the servant is manifestly unlawful the servant will not be entitled to any indemnity[244]. On the other hand if the master expressly orders or in absence of express orders, the masters knows or ought reasonably to know that his servant is committing a crime in the course of his employment and he fails to restrain him, the master shall be guilty of that crime. Liability here arises because the employee/servant enjoys a delegated power; the offence is essentially that of the employee, liability for it being ascribed to the employer or master ï the rationale of the liability relates to the failure of an employer to adequately perform a supervisory function[245].

There are however when employers/masters might not be human persons in this case they are artificial personalities who do not have the minds of their own to think or perform any act whether a wrong or a crime then their guilt might become difficult to prove. Thus at common law the position was that a master would not be held liable for the crime of his servan*t. In kar-aberis Limited and Titton v Inspector General of Police* where some vehicles were stolen by unknown persons and it was contended that Titton, as area manager of the first defendant company, should be held criminally liable for the offence committed in relation to the vehicles But the Supreme Court rejected this contention holding that the defendants could not be held responsible for the offence.[246]

Liability of a master/employer seems to be in two ways: it may arise under the rules of common law, or from a duty imposed by statute personally on the employer which he cannot delegate to his servant. In *Associated Tin miners of Nigeria Ltd v Chief Inspector*

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[243] Smith J.C. & Hogan, B. Criminal Law, (London & Co (Published) Ltd), 7th Ed, 1992 ñCorporate Criminal Liability in Nigeria Malthouse Press Limited). First Edition 2008 p. 37.
[244]Akintude E.,Supra p. 279.
[245]*Griffiths v Studebakers Ltd (1924) 1KB 103 Reynolds v. G.H Austin & Sons Ltd* [1951] 2KB 135.
[246](1958)3 F.S.C 20;(1958)WNCR 241.

of Mines it was held that section 101 of the Minerals Act 1946 makes the holder of a mining lease personally liable for an offence committed by his tributes.[247]

3.4.1 Employers Vicarious Criminal Liability

However, an employer (a corporation) can be vicariously liable for crimes of his employees not because the acts are ascribed to it alone, but also because it has either by his ñimplied policyò created enabling environment, which enhanced the commission of the offence, or by acquiescence, condoned and encouraged the commission of the offence.

In *Lloyd v Grace, Smith & co* a solicitors managing clerk induced an old widow by fraud to part with her title deed and money and later appropriated them. The defence was that the servant committed the crime for his own benefit and that the employers were not answerable for such an act. But the House of Lords rejected the contention. Their Lordships held that a fraud committed in the course of business which the servant was ñauthorized or held out as authorized to transact on behalf of his principalò was an act done in the course of employment and the masters were liable for it.[248]

There are difficulties in grounding vicarious liability for crimes on employers especially where they are corporations. This is because there is always a problem in determining whose intent shall be ascribed as personal to the corporation. According to Ali L. in his book Corporate Criminal Liability in Nigeriaò. ñThe test of liability is that of delegation[249]ò. Thus the statutes may impose duties on the master which he cannot delegate the responsibility. Lord Atkin in the English case of *Mousell Brothers Ltd v London and North-Western Rly co* buttressed this issue in the following terms*:*

> é . While prima-facie a principal is not to be criminally responsible for the acts of his servants, yet the legislature may prohibit an act or enforce a duty in such terms as to make the prohibition or the duty absolute; in which case the principal is liable if the

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[247] (1950) 19N.L.R-69; *Arab Transport v Police(1952) 20 N.L.R 65* where a company was charged with permitting one of its lorries to be used for carrying passengers contrary to regulations.
[248] (1912)A.C.716;(1911-13) ALL E.R Rep 51.
[249] Ali L. Op.cit p. 81.

> act is in fact done by his servants. To ascertain whether a particular act of parliament has that effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom in ordinary circumstances it would be performed, and the person upon whom the penalty is imposed..[250]

These duties as espoused by Lord Atkin above are non delegable some examples of such duties are; the safety provisions of the Factories Act which impose duty personally on the master example section 69 (1) of the Act which provides thus:

> In the event of any contravention in or in connection with or in relation to a factory of the provisions of this Act or of any regulation or order made there under, the Occupier or (if the contravention is one in respect of which the owner is by or under this Act made responsible) the owner, of the factory shall, subject as hereafter in this Act provided be guilty of an offence under this Actò.[251]

Such status can also impose duty upon the nature of the masterôs business operation[252]. Also the new law Employeeôs Compensation Act 2010[253] imposes duty on the employer and those duties are not delegable.

The Nigerian Liquor Act 1917 provides that ñthe holder of a retail license who permits the premises to be used as brothel or habitual resort or place of meeting of prostitutes shall be liable to a fine of N100[254]ò. An identical provision of the Nigerian Liquor Act 1917 is the English Metropolitan Police Act 1893 and the principle was applied in *Allen v White Head*. In this case, a café proprietor was held vicariously guilty for permitting prostitutes to meet on his premises, even though he had strictly warned his café manager against such occurrences of which he had no knowledge[255].

A clearer picture of the basis of masterôs liability was seen in *R v Winson* where the director of a club had delegated his duty under Section 16 (1) of the licensing Act 1964 to his Manager who, in turn sub-delegated it to his own staff. The court found the director

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[250] (1917)2KB 896.
[251] Emphasis Mine.
[252] E.g. the duty of ñinnkeeperò, or licensee under Nigerian Liquor Acts 1971-84 and ñlicenseeò under the Minerals Act 1946 S. 101.
[253] Section 39 (4) of the Employees Compensation Act. The Full analysis of the Act will be done in subsequent chapters.
[254] Section 54 a.
[255] S.44(1930) 1KB 2,(1929) All E.R Rep.13.

guilty of knowingly selling intoxicating liquors to unqualified persons[256]. The English Court decided that liability in any case should depend on close reading of a particular Act and the questions which are to be answered are; knowing the person on whom the statutory duty is placed, what is the object of the statue, and who is to bear the penalty in the event of a breach of the duty being committed.[257]

In the case of a corporate employer, the company must work through living beings thus the responsibility must also be borne by living beings when the corporate body is in breach[258]. In *Board of Custom& Excise v Agu &Chika Brothers Ltd* a company was held vicariously liable for knowingly importing prohibited goods into the country even though the offence was committed by company agents. [259]

3.4.2 Corporate Liability

The Blackôs Law Dictionary[260] defines a corporation as;

An entity having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group of or succession of persons established in accordance with legal rules into a legal or justice person that has a legal personality distinct from natural persons who make it up, exists indefinitely apart from them, and has legal powers that its constitution gives it.[261]

A corporation has also been viewed precisely as ñan ingenious device for obtaining profit without individual responsibility[262]. A corporation from the above definition is a non-human or artificial organ a legal personality which is usually an economic organization that provides a vast range of goods and services to the society.

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[256]The Nigerian Liquor Act S. 54 lists drunken person, children under the age of 14, police and soldiers, among persons to whom intoxicating liquor should not be sold.
[257](1968) 1 ALL N.L.R.
[258]*Lernnard & Carry Co Ltd v Asiatic Co Ltd (1915)A.C.705,713-714.*
[259] (1977) 3 FRCR 332.
[260] Bryan A. Garner Blackôs Law Dictionary 9th Edition Supra p. 391.
[261] Companies and Allied Matters Act Cap 20 Laws of Federation of Nigeria 2004.
[262] A.Bierce : The Devilsô Dictionary, 1965 (as was cited by Ali L. in ócorporate Criminal Liability in Nigeriaô Op.cit p. 62.

In Nigeria, the constitutional frame work for limited liability corporations is the memorandum and articles of association. Section 35 (2) (a) of the Companies and Allied Matters Act, 2004[263] requires that these documents be delivered to the Corporate Affairs Commission (CAC) as forming parts of the documents for incorporation. As the Commission registers the company, it attends a legal status and becomes a legal personality who can sue and be sued.

The liability of a corporate body or a corporation can be in two broad ways;

(i) Civil liability

(ii) Criminal liability

The evolution of legal liabilities was a gradual one and it was preceded by rapid economic changes of industrialization and expansion of corporate activities. The era of ñlaissez- faireò and free enterprise which persisted into the later part of nineteenth century was characterized by death and serious injuries at work in many industries. Example railways and other factories. This compelled the writings of early nineteenth century philosophers such as Marx and Engels and those of the middle of twentieth century[264].

3.4.3 Civil Liability

In the area of liability for civil wrong[265] there were growing number of civil actions against companies for compensation where workers had been injured in most horrifying circumstances and if a doctrine of negligence allowing such claims had been firmly established, corporations would have had to pay stupendously in damages. In the alternative, they would have spent what they claimed were prohibitively high sums on safety.

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[263] Companies and Allied Matters Act Cap 20 Laws of the Federation of Nigeria 2004.

[264] F.Engels,*The condition of working class in England*,(London: Panther)1845,1969;Pastim(as was cited by L. Ali, supra)

[265] The history of Employers liability discussed in the previous chapters covers this.

Although at this time the classical basis of corporate liability for civil wrongs such as vicarious liability and others[266] were present which would have aided the employee/workers then by exempting them from liabilities yet, there were defences which were available to the corporate bodies at that time[267] the decision of the court in *Thrussel v hanydyside* by per Hawkins J, one of these defences were applied[268]. In that case a worker was injured in the course of his employment and he was denied of damages by the court. The court held inter alia ñThe master says here is the work, do it or let alone é . The master says this, the servant does the work earns his wages and is paid but is hurt. On what principle of reason or justice should the master be liable to him in respect of that hurt?[269]

On the other hand, the civil law seems to offer support and protect companies thus, even in the area of contract, the doctrine of privity of contract limits the scope of the companyôs liability to only parties to a contract and no other person can enforce or be bound by the contract. Even where a stranger could benefit from the contract he would have no remedy where the agreement was not carried out by him with the company.

However with the intensification of the activities of corporations and increased complexities of the operations in the second half of the nineteenth and the beginning of the twentieth centuryôs, and even to this twenty-first century there has been a gradual shift from upholding these traditional defences to corporate civil liability. On the other hand, the courts in their decisions have played an important role in the development of the law. Today workers enjoy some rights and privileges and can seek for legal redress which can lead to their being compensated according to the law where they suffer injuries at work[270].

3.4.4 Corporate Criminal Liability

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[266] Respondents superior and alter ego doctrines.
[267] Volenti non fit injuria, contributory negligence, doctrine of common employment etc. (these defences are to be discussed fully here under).
[268] (1888) 20 QBD at 364.
[269] M.Brazier, *Street on Torts* (London: Butterworth) 1988, p.238.
[270] These have been discussed in previous chapters.

Liability of a company in criminal acts may pose some difficulties because of the issue of ómensreaô which is the óintentô of the person doing the act. Although the law sees a registered company as a legal personality with other rights as a natural person yet a company cannot be equated to a natural person because a corporate body depends solely on the people to function. According to Ali L. in his book ñCorporations like organizations are a collection of roles and functions, which are occupied by a series of people[271]ò.

The Company and Allied Matters Act (CAMA) in section 63 (1) provides thus;
ó ôA company shall act through its members in general meeting or its board of directors, or through officers, or agents appointed by or under authority derived from the members in general meeting or the broad of directors[272]ò.

In Section 63 (3) CAMA rests the general power of management in the board. CAMA also recognizes a further third organ, the managing director[273].In *H.L. Bolton (Engineering) Co Ltd v T.J Graham & sons Ltd*[274] Lord Denning succinctly points out that the people whose actions can be considered those of the company itself are not ñmere servants and agents who are nothing more than hands to do the workò but ñdirectors and managers who represent the directing mind and will of the company and control what it does[275].

CAMA seems to have adopted the common law position and provides thus;
ñAny act of the members in general meeting, the board of directors or of a managing director while carrying on in the usual way the business of the company, the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person[276]ò.

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[271] L.,Ali ,*Corporate Criminal Liability* in Nigeria Op.cit p.66.
[272] S.63 (1) CAMA.
[273] S.64(b).
[274] (1957) 1 QB 159.
[275] p. 172.
[276] S.65.

From the above, where any of the persons above does any criminal act in the course of the business of the company, the company shall be criminally liable. It is worthy to know that the fact that a corporation is liable for corporate crime is not a bar to managerial or official culpability for the same crime, where this can be established[277]. According to Stessen, G. This is by ócumulative prosecution of corporate and individual offendersõ[278]. The directors or officers liability may be analogous to that of a natural person who has aided and abetted the commission of a crime, and in this case, the person abetted or aided is the corporation which is an artificial person.

The Nigerian Legal System which is fashioned along the same system as the English legal system accommodates the position at common law to the effect that corporations could be criminally liable but not for all offences. Before proceeding to the discussion it is necessarily to define the term ñCorporate Crimesò. A Corporate crime according to Blackôs Law dictionary[279] is óa crime committed by a corporationôs representatives acting on its behalfô.

Corporate Crimes according to a legal scholar Dr. David Folorunsho Tom, are; óIllegal acts, omissions or commissions by corporate organizations themselves as, social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselvesò.[280]

From the above definitions, corporate crimes can either be committed by corporations or by officials or employees of the corporations stipulated in the provisions of CAMA cited above.

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[277] Ibid.
[278] G.,Steesen òCorporate Criminal Liability:a Comparative Perspective,ò *International and Comparative Law Quartely (ICLQ)*1994,p.493 at 427.
[279]B. Garner , Blackôs Law Dictionary Op .cit p. 427
[280] C. Reasons .,òCrime Against the Environment: Some Theoretical and Practice Concernsò Crime L.Q. Vol. 34 Nov. 1 (1991) (as was cited in the article óCorporate Crimes and liability under Nigeria Laws. www.http://ebookbrower.com/corporate-crimes_and liability_under - Nigerian Laws

The problem of criminal liability of corporations which rested on the twin pillars of men srea and actus reus has remained at Common Law. This is because a corporation has no existence of its own let alone a mind of his own[281]. Also on the issue of punishment, a corporation could not be punished with such sanction as imprisonment which could be imposed at Assizes[282]. But with the introduction of strict liability offences, corporate criminal liability becomes very pronounced. These offences do not require the mental state for its commission and the penalty is a fine. These crimes are always created by statute, they do not require the proof of mens rea in form of intention, recklessness, knowledge or even negligence. All that needed is a proof of the actus reus.

In *Sharas v Rutzena* Wright J. stated ñthere is a presumption that mens rea or evil intention or knowledge of wrongfulness of the act is an essential ingredient in every offence, but the presumption is liable to be displaced either by the words of the statute creating the offences or by the subject matter[283]ò.The above assertion shows that the statute creating an offence or the subject matter can displace the mental state or mens rea of an offence.

In *Sweet v Parsely* the court also held that; imposition of strict liability may be more justifiable where the defendant (company) is engaging in a profit making activity which creates hazard for the public. This is the case in our industries because they engage more in a profit making activity which most times could be dangerous to their workers and to the public at large. Therefore exonerating them from criminal liability will be mostly unjust even when the particular officer whose acts could be regarded as the acts of the company could be identified.[284]

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[281] The difficulties in punishing corporations physically prompted second Baron Thurlow to ask; ñDid you ever expect a corporation to have a conscience when, it has no soul to be dammed and no body to be kickedò R. Card cross and Jones. *Introduction to criminal law,* (London) Butterworth 9th ed (1980) p. 107.
[282] (Assizes ï is a court of law in the past which travelled to each country of England and Wales) Smith & Hogan, Criminal Law (London Butterworths, 6th ed) 1988 P. 170 (Ibid Pg. 4).
[283] (1895)1QB 918 at 921.
[284] (1970) A.C.132.

The safety legislations already discussed impose strict liability for breach of any of the provisions. On the other hand there is a pertinent issue in corporate criminal liability whether a corporate body could be liable for serious offences such as murder and manslaughter. This is because death could occur where adequate measures are not put in place in industries. That will be considered here under.

3.4.5. Corporate Manslaughter

Although there are obvious difficulties in establishing a companyôs culpability for a criminal act perpetrated by one of its employees, it is possible, for a company to be charged and convicted (by way of fine) of the most serious crimes like manslaughter[285].

Manslaughter according to Blackôs Law Dictionary is; ñThe unlawful killing of a human being without malice a fore thoughtò.[286]

According to Smith,

> Manslaughter is described as a complex crime of no less than five varieties. It covers three cases where the defendant kills with the fault required for murder but, because of the presence of a particular extenuating circumstance recognized by law, the offence is reduced to manslaughter. These cases are traditionally known as voluntary manslaughter. The other cases are involuntary manslaughter and consist of homicides committed with fault elements less than that required for murder but recognized by the common law as a sufficient to find liability for homicide[287].

The Nigerian Criminal Code Act defines Manslaughter as a ñperson who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughterò.[288]

From the above provisions it can be deduced that manslaughter involves an unlawful killing or death without an intention. It becomes murder where the intent is not in question.

In *R v Coroner for East Kent, ex parte Spooner* the Divisional Court, in hearing an application for the judicial review of a coronerôs decision into deaths resulting from the

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[285] (1987) 3 BCC 636.
[286] B.Garner ñBlackôs Law Dictionaryò 9th Edition Op.Cit p.1049.
[287] J. C. Smith. *Smith and Hogan, Criminal Law* (9th Edition) Butterworthôs.p 213.
[288] Criminal Code Act Cap C. 38 LFN 2004 Section 317.

sinking of a passengersô ship, ótheHerald of Free Enterpriseô, expressed the view that on appropriate facts a corporation could be convicted of Manslaughter.[289]

Also in a company known as Nationwide Heating Systems Ltd a young apprentice named Ben Pinkham was killed in a boatyard explosion when he was working at the boat factory in Plymouth in February 2003. The apprentice was using a highly flammable solvent to clean a resin storage tank but had not been warned about the dangers of using the chemical in a confined space. On the day of the incident he was suspended from a harness inside the tank and had knocked over a halogen light he was using. There was an explosion and smoke and flames came from the tank. He died in hospital six days after suffering 90% burns in the explosion. The company was found guilty of manslaughter and Alan Mark, the managing director was convicted of manslaughter and jailed for 12 months. The trial judge Steel J. said:ò The life of a young man has been needlessly lost in a terrible way. This case must be viewed as a warning to all employers to pay rigorous and robust attention to matters of safetyò. The judge maintained ñPrincess Yachts had left a good quantity of acetone in open buckets with no warning on themò The Company was fined £90, 00 with £10,000 prosecution costs. In Attorney Generalôs Reference (No 2 of 1999)[290]. The Court of Appeal considered the circumstances in which a company could be convicted of involuntary manslaughter, with specific reference to the offence of manslaughter associated with the prosecution of a company[291].The Court of Appealôs opinion was delivered at the request of the Attorney General and followed the Southall rail disaster of 1997, in which seven train passengers were killed.

> The court considered two questions thus: ñCan a defendant be convicted of manslaughter by gross negligence without the need to establish the defendantôs state of mind?ò Can a non-human defendant be convicted of manslaughter by gross negligence in the absence of evidence establishing the guilt of an identified human being for the same crime?[292]

In relation to the first question, an affirmative answer was given because the court considered the decision in *R v Adomako* where the court maintained that the guilt of the

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[289] (1987)3BCC 636.
[290] (2000) WLR, 195.
[291] S.Griffin.ó*Company Law Fundamental Principle Pearson Education Limited*, 4th Edition 2006 p. 103.
[292] Ibid.

defendant might be established on the basis of the defendant having had an obvious and reckless disregard for human life, recklessness being construed in an objective sense with no perquisite of having to prove mensrea[293]. In relation to the second question, the court answered in the negative. The court held that in seeking to establish a companyôs guilt, it was still necessary to show that, in causing death, the act of the employee (with the employee being liable for manslaughter) was an act attributable to the company, via its directing mind[294].

From the above decision, one would rightly say that in corporate manslaughter, the corporation would be guilty if there are elements of negligence or recklessness on the part of the company and also the act of the employee must show that he the employee is liable for manslaughter and his act must be connected to the Company. Cases of Corporate Manslaughter abound in other jurisdictions in United Kingdom, United States and other countries. According to Forli, G, Appleby ñThe issue of Corporate Criminal liability has been a concern not only in the UK, but also in other jurisdictions worldwide. Death resulting from accidents at work, and which have been caused by the failure of corporations to ensure safe working conditions and practices, is the subject of increased scrutiny by legislators[295]ò.

In 2012 the legislature passed a new bill on health and safety.[296] It is hopeful that in no time this bill will be become an enabling law in Nigeria.

It is worthy to note that United Kingdom presently has an Act on Corporate Manslaughter and Corporate Homicide 2007. This Act makes corporations and a range of crown bodies liable in the way their senior managers run their company, rather than focusing on the failings and guilt of any particular individual[297]. The offence is committed when an organization owes a duty to take reasonable care for a personôs

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[293] (1995) 1A.C.171.
[294] S. Griffin , Company Law Fundamental Principle's Op. cit p. 103.
[295] G.,Forlin . Appleby et al, *Corporate Liability; Work Related Deaths and Criminal Prosecutions*,(London: Tottel Publishing Ltd, 2003).
[296]The Labour Safety, Health, Welfare Bill 2012.
[297] M. Welham .'*Corporate Manslaughter and Corporate Homicide* Op.cit p146.

safety, but the way in which its activities have been managed or organized by senior managers is a substantial element in an incident and gross breach of the duty which causes an employeeôs or other persons death[298].

3.3.6 Individual Liability of Corporate Officers

It was earlier stated that corporate officers can be personally liable for corporate crime in this case both the key staff and the corporation shall be liable on conviction. This usually poses some difficulties, examples; in cases where a corporation fails in his duty of care to the employee, it may be difficult to show that any given officer should have been concerned in the matter. The problem may further be worsened by knowing whose duty to act especially in a big corporation where all directors or officer of a corporation may not be fully conversant with the day to day affairs of the corporation. Thus the primary obstacle in the selection of the appropriate persons to be prosecuted[299] may arise. However there are statutory provisions which recognize the possibility of sanctioning Company directors and corporations alike where corporate crimes are committed[300].

Section 17 (2), Food and Drugs Act

> Where an offenceé . Committed by a body corporate is proved to have been committed with the consent or continuance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. [301]

Similarly in England and Wales the possible sanctioning of company directors acknowledged by the courts, is often confirmed by provisions to be found in statutes that create offences likely to be committed by corporations[302]. In one English Case a company named Teglgard Hardwood (UK) Ltd and one of its directors, John Horner, were found guilty of manslaughter of an 18-years old labourer. Christopher Longrig who died when

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[298] Ibid.

[299] L. H.,Leigh The Criminal Liability of Corporation (London) Weidenfeld and Nicolson) 1969 p. 174 as was cited in Ali L. Supra p. 317.

[300] Ibid.

[301]Cap F 32 LFN 2004. Others are S.45(1)Banks and other Financial Institutions Act, No. 25 1991,S.7Harmful Waste (Special Criminal Provisions etc Cap H.I. LFN 2004).

[302]Stessen, G. ôCorporate Criminal Liability: Comparative perspective, *International and Comparative Law Quarterly* (ICLQ) 1994 p. 493 at 519 (as was cited by Ali L. Supra p. 102.

a nine-meter stack of timber fell on him on 26 April 2001, whilst he was working for the company at a shipyard in Hessele. The court held that the company had paid scant regard to even the most basic health and safety precautions and had not assessed the risks to employees. When sentencing, the judge commented on the ñcallous indifference, of company director. John Horner. He was sentenced to a 15 month prison sentence, suspended for two years, and his firm Teglgaard Hardwood UK was fined £25,000[303]. It seems there are, three grounds for liability of criminal negligence of corporate officers. According to Hans Thornstedt in his book. There are 3 grounds for liability of criminal negligence of corporate offices. ôThe imposition of criminal liability on the executive makes criminal provisions as effective as possible since management is best able to prevent offences being committed: Management is in this position not only because of its economic power, but also because of its ability to organize the enterprise so that violation of laws are avoidedô.[304]

The above view seems to be possible only in small corporations where the directors are always in control but in large corporations the possibility of the executives to control appears be a negation. The second ground appears to be a rub-off on the delegation principle since a statutory violation may often result in a saving or again for the enterprise, it would therefore be reasonable to place criminal liability on the one who makes such saving or gain[305]. This reason seems to apply more to civil wrongs than crimes because crimes are viewed largely as acts against the society which punishment seeks to change. Different from civil wrongs whose basis of liability is as operative in the respondent superior doctrine meaning ólet the master answerô.

A third reason for holding executives liable, stem from the pervading imperative to be responsive and responsible to the office occupied. Thus an executive is required to obtain

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[303] Unreported.(www.corporateacccountability.org) as was cited by Michael Welham, *Corporate Manslaughter and Corporate Homicide:a Managers Guide to Legal Compliance* 2nd ed.,(London: Tottel Publishing Ltd 2008),p.61.

[304]Krusse, S.V.,ôBusiness Executives and Criminal Liability for Negligence in Company Lawô Vol. 4 1983 no.1 p.243. The case was unreported (www.corporateaccountability.org) as was cited by Michael Welham in his book *Corporate Manslaughter and Corporate Homicide: A Managers Guide to Legal Compliance* Second Edition, Tottel Publishing Ltd 2008 p. 61.

[305] As was cited by L. Ali . ó*Corporate Criminal Liability in Nigeria'* Op.cit p. 108.

comprehensive knowledge of the laws and customary practices governing a particular filed in which he operates. Ignorance of those rules will not be a defence.

In Nigeria, instances of executive or management culpability in corporate crime are very evident in the Failed Banks Tribunal trials in 1990s under the Failed Banks *(Recovery of Debts and Financial Malpractices in Banks) Act 1994 and the Banks and other Financial Institutions Act 1987.*

In *Osaghae v Federal Republic of Nigeria* per lge J.C.A. observed;

> Finding the company guilty of an offence is to my mind a condition precedent to making its Directors, Managers and Secretary vicariously liable. Even the liability is not absolute because of the attached proviso, i.e. unless he proves that the offence was committed without his consent or connivance and that he exercised all diligence to prevent the commission of the offence[306]

From the above, the condition precedent in finding the executive officers vicariously liable is that the company must be found guilty. The reasons for this could be because;

(i) The mens rea of the offence for which the corporation is held liable is first borne by the director, manager or secretary who in such instances is the corporate ómindô and ówillô, before it is ascribed to the company an artificial entity. In such case, the executive officers are seen as the company for purposes of criminal liability.

(ii) Liability of the Directorôs Managers or Secretary in such instance appears to arise by virtue of the doctrine of alter ego, as they are seen as the company itself for purposes of corporate criminal liability.

Thus, the above context could be for the purposes of execution of judgment to recover the debt owed by the company. Where the debtor company is unable to discharge the debt, the Receiver or liquidator may proceed against the officers.

It is worthy to note that the liability of the Directors, Managers and Secretary is not automatic because if they can prove that they did not connive or consent to the commission of the offence they will not be found guilty.

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[306] (1994) 4NCLR 192 at 203.

In *NDIC v Niger Café & Foods (W.A) Ltd*& 16 Ors the 3rd respondent filed an interlocutory application for an order to strike out his name from the suit. Subsequently the 2nd, 5th, 7th, 8th, 9th, 12th and 14th respondents filed similar application to be struck out. The Applicant (NDIC) contended that the Tribunal should allow the hearing of the suit to the end as the totality of the evidence will put the tribunal in a much better position to make a decision. The tribunal held the respondentôs application proper and struck out the names of the parties misjoined, that is 2nd, 3rd, 5th, 6th, 8th, 10th, 12th and 17th respondent.[307]

The above decision goes on to buttress the foundational principles of company law with response to the basis of liability of directors in absence of any wrong doing. Section 279 of CAMA provides how a director should act in discharging his duties thus;

> 'At all times in what he believes to be in the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such names as a faithful, diligent, careful and ordinarily skilful director would act in the circumstanceô[308]. Therefore executive officers are expected to adhere strictly to the above provision of CAMA otherwise they would be liable personally or vicariously for any wrong which the company is held guilty.

3.4.7 Corporate Liability and Ultra Vires Rule

A company as earlier stated is an artificial person which possesses some legal rights. The corporation possesses corporate constitutional documents which define the corporate capacity for the regulation of the affairs of the corporation. This one may say forms the basis of corporate liability for civil wrongs and crimes. Thus, the basis of the operation of the doctrine of ultravires which acts like checks and limits the capacity of a corporation to act.

In Nigeria, the constitutional framework for limited liability corporations is the Memorandum of Association and the Articles of Association Section 35 (2) (a) of the

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[307] Suit No FBFMT/L/211/06/96,*NDIC v David Laboratories Ltd& Ors FBFMT*/L/211/4096.
[308] *Recity Equitable* & Co (1923) Ch 407 Per Romer J.

Companies and Allied Matters Act[309] requires that the Memorandum of Association and the Articles of Association of a corporation be lodged with the Corporate Affairs Commission (CAC) as forming parts of the documents for incorporation. By these documents, vital components of the companyôs constitution such as its name, address, object status and capital structure are publicized[310].The object clause of the memorandum defines the capacity of the company to act because as a legal personality, the company cannot act outside the purposes or beyond the scope defined by its object otherwise it would be said to have acted ultra vires.. At common law, an act, which is ultra vires the company, is null and void[311].

In English law, there seems to be no clear rule regarding the ultra vires limitation. The doctrine appears to have been ignored in both law of contract and property[312], while the minds and bodies of the officers and servants of the corporation have been taken to provide its lack of mental and physical faculties. This is evident in two ways.

(i) By holding that a corporation is vicariously liable for the acts of his servants and agents where a natural person would similarly be liable[313], example in public nuisance at common law, or when a statute imposes vicarious liability[314].

(ii) By holding that in every corporation there are certain persons, designated ñControlling officersò who control and direct its activities and those persons when acting in the companyôs business are considered to be the ñembodiment of the companyò[315] for this purpose. Their acts and states of mind are the company acts and states of mind and it is held liable, not for the acts of his servants but for what any such debentures, the court may prohibit by

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[309] Cap C20 LFN 2004.
[310]Whether limited or unlimited, private or public etc.
[311] *Continental Chemist Ltd v Ifekandu* (1966) 1 All N.L.R. 1.
[312] Winfield, C.F: Textbook of the law of Tort (4th ed0 128 (as was cited by Ali. L. Corporate Criminal Liability in Nigeria Op.cit P. 64.
[313] Great North of England Ply Co. *(1846) 9 QB* 315.
[314]Mousell Bross Ltd v London and Norths Western Rly Co. *(1917) 2 KB 836.*
[315] *Essendon Engineering Co Ltd vMaile (1982*).

injunction the doing of any act or the conveyance or transfer of any property in breach of subsection (1) of section 39[316].

This is subject to the right of the company or other party to the contract or transaction to compensation for any loss or damage sustained by reason of the setting aside or prohibition of the performance of such contract or transaction[317]. The combined effect of these provisions seems to be that a contract or transaction is not invalid by the mere fact that it is in excess of the authorized business of the company or in excess of the objects or powers of the company.

Furthermore, the acts of the servants cannot be invalid because it is done in excess of the objects. Thus if in the process of carrying on acts which are ultravires or intra vires the corporate objects or business, a company commits an act or omission amounting to a wrong or a crime, the company will be liable as to such extent. The determining factor to establish is that the company carried out the act or omission.

3.4 Employer's Defence

The last point to be considered in this chapter is whether a company has any defence when in breach of industrial safety laws. From the discussion so far, it seems that for every breach of duty of care imposed on the employer by the various industrial safety laws, the employee is entitled to a remedy. This takes the form of compensation as prescribed by the individual enactments or under the common law.

The employer on the other hand, is not without a defence. There are four broad defences available to the employer whenever an allegation of breach of statutory duty is raised against him[318].

(i) Remoteness of Damage
(ii) Contributory Negligence
(iii) Volenti non fit injuria (consent)

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[316] Section 39 (4) CAMA.
[317] Section 39 (5) Ibid.
[318] A. Emiola, Nigerian Labour Law Op.Cit p.207.

(iv) Limitation of time

3.5.1 Remoteness of Damage

An injury may be remote either because it is not foreseeable or because the employee is the sole cause of his own injury. The defence of remoteness is however dependent on the issue of causation[319]. In the case of *Federal Super Phosphate Fertilizer & Co Ltd v Abraham* Otaru the company was found liable for failure to comply with a parallel provision of section 23 of the *Factories Act 1987.*[320]

This defence of remoteness of damage is based on the theory that where the employerôs default is not the proximate or predominant cause of the workmanôs injury, the employer cannot be liable. In the case of *Ginty v Belmont Building Suppliers Ltd*[321] the plaintiff was warned not to work on the asbestos roofs without using boards. Boards were provided but kept in the store nearby and the plaintiffs knew where the boards were kept but worked without using them. He fell through an opening and injured himself. The court held that he was to be blamed for his misfortune. Where however, the damage is of a kind as a reasonable man should have for seen, it will not be a defence even if the injury would not have occurred but for the physical peculiarity of the victim[322].It is worthy to note that an employer could escape liability despite his failure to provide a safety device as required by a statute if it can be shown ñon the balance of probabilitiesò that the worker would not have used the device even if one had been provided. In *Mcwilliams v William Arrol & Co Ltd*. Where the victim an experienced steel erector was in the habit of failing to use his belt in erecting steel. On that fateful day, none was provided and he fell and died. The court held on that probability, that the cause of death was not failure to provide belt, thus defendant was not liable[323]. The decision might be different if the failure of the employee to use the belt resulted in the death of another worker in this case,

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[319] Ibid p. 207.
[320](1959) 1 NLTR 132.
[321] (1959) 3 ALL ER 414.
[322] *Smith v. Leach Brain Co. Ltd* (1962) 2 Q B 405 It was said in this case that an employer must take his worker as he finds him; if he has a head as delicate as an eggshell which could break by mere tapping he who taps that head and causes it to break must accept the consequences of his action even if unexpected.
[323] (1962) 1ALL ER 623.

the act of the steel erector would have affected another worker and the defendant in this case would be liable for being negligent knowing that the steel erector would not use the belt (or any other safety device) and still allowed him to erect the steel. Where however, the employer is interrupted by the act of a third party and injury results the original act or omission of the employer might cease to be the cause of such injury[324].

The decision of in *McWilliams v William Arrol* Ltd established four distinct steps necessary in the chain of causation; they are:

(i) There must be a duty to supply a safety device
(ii) There must be a breach of the duty
(iii) Evidence must show that the workman would have used the device if provided
(iv) It should be established that if the workman had used the device he would not have been injured or killed.[325]

Where Act does not protect the injury or where the accident is entirely unforeseeable, the act or omission of the employer will also not have been the cause of the accident and the employer will not be liable[326].

3.5.2 Contributory Negligence

This is another defence which can exonerate the employer from total liability arising from the injury suffered by a workman. At common law, it was a complete defence and no question of apportionment of liability arose but the party who had the last opportunity of avoiding the accident bore the whole responsibility. Where contributory negligence is offered as a defence, the defendant would need only to prove that the plaintiff failed to take reasonable care for his own safety.

Contributory negligence is a defence both to negligence and to breach of statutory duty. But the onus of proving contributory negligence rests on the defendant[327].The *Factories*

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[324] *Close v Steel Company of Wales Ltd (1961)*2ALL. ER. 953.
[325] Supra.
[326] *Close v. Steel Company of Wales Ltd Supra*.
[327] *J.M. Evans v. S.A. Bakare* (1974) 1 NMLR 78 at 81.

Act, section 14 provides that the dangerous part of machinery should be fenced or it should be erected in such a way as to be safe for the workman as if it had been securely fenced. But courts seem to be ready to apportion the blame for accident between the employer and the worker while the later contributed substantially to the injury suffered by the workman.

In *Alidu Orekoya v University Of Ife& Anor* Thompson J. reduced by 50% damages awarded to a typist who scrambled to take a bus in the University Campus with an umbrella in his hand and there by sustained injury resulting in deformity in one of his legs.[328]

In Nigeria, the defence of contributory negligence is regulated by the *Civil Liability (Miscellaneous Provisions) Act 1961, The Fatal Accident Act 1961 (Lagos) And By Section 8 Of The Western Nigeria Torts Law 1958*[329] (now re-enacted in Delta, Edo, Ekiti, Ogun, Ondo, Osun and Oyo States) enables the courts to apportion blame and reduce any claims ñto such extent as the court thinks just and equitable[330].

Forseeability is very relevant in contributing Negligence. According to Lord Denning in *Jones v Livox Quarrie*s. ñA person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonably prudent man he might hurt himself; and in his reckonings he must take into account the possibility of others being carelessò[331]

The principle of contributory Negligence also covers a situation where the plaintiff though in no way contributing to the accident but contributed to the degree of injury[332].

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[328] (1972)HIF/3/72 decided on 18th September 1972.
[329] Also Civil Liability (Miscellaneous Provision Law) S. 9 (1) Fatal Accident Law 1961. S. 7 Tort Law (East) S. 3 (1)
[330] Ibid S. 11 (1); Torts Law, Eastern Nigeria, S. 3 (1) now applicable in Abia, AkwaIbom, Anambra, Bayelsa, Cross River, Enugu, Imo and Rivers State and Civil Liability (Miscellaneous Provisions) Law (North) applicable in all Northern States in Nigeria.
[331] (1952)2QB 698.
[332] *Groom v Butcher* (1975) 3 ALL.ER. 520.

Section 8 of the Torts law contains the word ófaultô and this covers negligence, breach of statutory[333] duty or other acts or omissions causing the damage; and ódamageô includes loss of life and probably economic[334]injury to any person[335].

Thus in *Federal Super Phosphate Fertilizer Ltd v Abraham Otaru*[336] an eighteen year old worker was taught the method of processing sulphuric acid, six weeks later he was working with the sulphuric acid with other workers and they were splashed with acid. The workmen were provided with khaki overalls and protective hand gloves with rubber boots but no water was provided in the immediate vicinity to neutralize the effect of the acid where an accident occurs. The youth was seriously injured and deformed. In an action for compensation under the equivalent provisions of sections 23 and 48 of the Factories Act 1987 the court stated:

> In the case in hand, the respondent was only 18 years old at the time of the accident. He was an inexperienced worker. None of the defence witnesses or any other person was shown to have specifically instructed the respondent of the measure he was to adopté . Nothing to suggest that the training was specifically directed to the hazards inherent in thesulphuric acid plant section. It is not sufficient to assume that the employee ought to be able to deal with the situation. It is the duty of the employer to ensure that the employee copes with it. A greater duty is imposed on the employer while the employee is an inexperienced person.

The court held that an employer owes a greater duty of care to a young and inexperienced worker than he owes to an adult employee.

From the above decisions, it is quite clear that the court expects that safety devices are to provided with instructions to their uses.

3.5.3 Volenti Non Fit Injuria

The defence of volenti non fit injuria is founded on the principle that a plaintiff cannot complain against the consequences of injury he has agreed or consented to bear. The doctrine arises purely from the relationship of employer and employee or that of principal and agent. The employersô liability is based only on the fact that it was committed by the

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[333] Civil Liability (Miscellaneous Provisions) Law(Lagos) S. 11 (3).
[334] Ibid S. 2 (1) *Agbonmagbe Bank Ltd v CFAO*) Ltd (1966) 1 All N.L.R 140.
[335] A Emiola, Op.cit p.211.
[336] Supra.

employee in the course of carrying out his duty. It is quite pertinent that the employer must be knowledgeable of the risk and consent to it.

Thus the maxim is volenti non fit injuria and not scienti non fit injuria is a latin maxim meaning(to a willing person, injury is not done)[337]. The leading case on this subject is *Smith v. Baker* where a workman was killed by a crane swinging above his head whilst carrying on his work. The employerôs defence was that the workman was aware of the danger and consented to it. The House of Lords rejected the contention and held that mere knowledge of the risk was not sufficient proof that the workman impliedly agreed to run the risk[338]. It seems that the basis of the decision in *Smith v Baker* is that the doctrine of volenti non fit injuria is ñnever applicable where the act to which the servant is involved is his normal dutyôô[339].

In *Obere v Eku Hospital Management Board* the employers were held liable for breach of their duty under the provisions of 1956 Act (now section 56 of the Factories Act 1987. In this case the plaintiff was quite aware of the dangerous state of the machine and complained of it to the employer on several occasions. He continued to work on the machine all the same; the alternative would have been to quit the job which was a hard decision to make in the absence of an alternative employment[340]

In summary, the doctrine then is that where a worker voluntarily and freely with knowledge of the nature of the risk he is taking, impliedly agrees to take such risk the employer will be absolved from all responsibility for any resulting injury. But mere knowledge might not be taken to be consent, as knowledge of a danger is not the same thing as consenting to it.

3.5.4 Limitation of Action

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[337] Ogunnyi O. Nigerian Labour and Employment Law in Perspective Folio Publishers Limited 2nd ed., p.147.
[338] (1871)A.C.325:(1891-94)All E.R.Rep 69.
[339] The view of P8 Lord Goddard in *Bowater V Rowley Regis Corporation* (1944) 1 All E.R. 465 p. 467.
[340] (1978)ANLR 115(1978)I.L.RN 251,*Imperial Chemical Industrial v Shatwell* (1965)A C 656;(1964)1All ER.

It is needful for a plaintiff to bring his action within the specified time allowed by the law otherwise he might loose his right. The limitation period can be used as a defence to an action in tort and the defendant can plead that the time within which the plaintiff should have brought his action will become statute-barred.

There are two main reasons for this rule:

(1) It is considered contrary to public policy that a potential defendant should have the possibility of litigation hanging over his head indefinitely.

(2) Where an action is brought several years after the event had occurred, the tendency is for memories of reliable witnesses to fail them and vital witnesses could have died before they are due to give evidence in particular proceedings[341].

Various statutes have regulated the limitation periods in respect of particular claims or proceedings thus the *Public Officer Prosecution Act 1916 S. 2 (a)* Fatal *Accidents Law (Lagos) S. 4 (2*) and similar laws in other states.

The limitation period for any action starts to run from

(i) the date on which the cause of action accrued; or

(ii) the date of knowledge, if later, of the person injured

Where the plaintiff is unconscious or was under a disability with the result that he had no knowledge or recollection of the events, time will not run until he becomes conscious of the act or is aware of his right of action. *Section 21 of the Western Nigerian Limitation Law 1959* the law provides, that a plaintiffôs right of action will not be barred;ò If on the date when any such right of action accrued for which a period of limitation is prescribed. The person to whom it accrued was under a disabilityò.[342]

In cases of disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under disability or dies.

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[341] A. Emiola , Nigerian Labour Law Supra p. 215. Public Officer Protection Act 1916 S.2 (a) Fatal Accidents Law (Lagos) S. 42) and Similar Laws in other States such as; Local Government Law 1976 (Oyo State) S. 172.

[342] S.21of Western Nigerian Limitation Law 1959.

What amounts to ódisabilityô seems to be a matter of fact to be established by evidence, and the degree of disability which the court will accept may depend on the facts.

However, it could seem that any[343] reasonable excuse such as fraud[344] or misrepresentation by the defendant or his agentôs [345] inability to assess the severity of the damage or injury[346], the difficulty of identifying the true defendant[347] and legal intervention may constitute a disability of the kind that would enable the court to exercise its discretion in granting the plaintiff an extension of time within which to seek his remedy.

If in all circumstances, it is just and equitable in interest of justice to allow the plaintiff to bring his action outside the limitation period; the court will allow this as an exemption.
In *Kirby v Leather* the English Court of Appeal held that these might be cases where, following a prolonged period of unconsciousness, a victim of an accident might yet recover damages even if he was ordinarily out of time.[348]

As a general principle a claim arising from contract[349] or in tort[350] must be commenced within six years but a claim arising from a specialty contract, ie contract made under seal has a twelve year limitation period. When the claim in tort is for personal death, the claim must be commenced within three years of the death. The court applied this principle in *Joel Ojo & Ors v Gabriel Awe & Anor* where the plaintiff sued as dependants of a relative to recover damages in respect of her death arising from a motor accident. The suit was commenced two months outside the permissible three years limit provided in

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[343] Limitation Law 1989, S. 33 (1) (2) (3).
[344] *Knipe v British Railways Board (1972) 1 All E.R. 673, 677.*
[345] *Ackber v. G.F. Green & Co. Ltd* (1975) 2 All ER 65.
[346] Limitation Law 1989, S. 33 (1) (2) (3).
[347] *Rodriguez v. Parker (1966) 2 All E.R. 349.*
[348] (1965) 2QB 367.
[349] Section 21 of Western Nigerian Limitation Law 1959. Under Section 33 of the English Limitation Act (1980) discretion is also given to the court to override a time limit if it appears to the court that it would be equitable to do so. Also sec. 28 Halsburyôs Laws of England, 4th Edition (Supra) pg. 295 paragraph 657, (1965) 2 QB 367; (1965) 1 All ER 349 Oyo State Limitation Law 1989 (Published as Edict No. 12 of 1989) S. 18 Lagos State Limitation Law 1966 S.7 (4) (a).
[350] Ibid.

section 3 of the Western Nigerian Torts Law. The court held that the plaintiff no longer had a cause of action.[351]

Similarly, the various local governments have also laid down a limitation period of six months within which to commence an action against a local authority. In *Adelakun v. Ayedade District Council* where the six months expired on August 1, the employment having been terminated on 1st February, 1956; proceedings were commenced on July 31, and the defence argued that the plaintiffôs action was statute barred because the six months limitation period would expire on the 30th of July. The learned judge upheld the plaintiffôs contention that February of that year being 29 days (a leap year) the plaintiffôs time did not run out until August 1, the action as therefore held to be within the limitation period.[352]

From the above decision it seems that the plaintiffôs lawyer and the judge only assumed that since February was 29 days (i.e. less than 30 days) the ólossô of one day should be compensated by the extension of limitation to August 1, but this was not the real legal issue.

In *Bewac Limited v Alimi Akanbi* where a workman was instructed to drive a motor vehicle from Lagos, but an accident occurred and the workman was seriously injured. The action was series of correspondence during which the employers admitted liability. Eventually, the company failed to pay compensation to the workman. In response to the suit, the employers contended that the suit was statute barred, since the plaintiff had only six months within which he could have brought the action. Taylor, C.J. held that the plaintiffôs suit was not statute barred where the conduct of employers, including their admission of liability from which the plaintiff was entitled to draw the inference that they were going to pay the statutory compensation.[353]

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[351] 1962 WNLR 254.
[352](1958)W.N.L.R.
[353] (1972) 2UlLR 297.

From the above decision, it is very clear that human factors could be considered as relevant and decisive in deciding whether or not to grant an extension of time for the plaintiff to commence an action. It is important to note that some laws tend to reduce the limitation period to a time shorter than the normal limitation period examples.
The Public Officers Protection Act (POPA) Cap P 41 Laws of Federation 2004. This Act reduces the period of instituting an action against a person for a public execution of public duties.

The section provides that where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority the following provisions shall have effect.

Paragraph (a) is very apt thus;

(a) the action, prosecution, or proceedings shall not lie or be instituted unless it is commenced within three months next after the ceasing there ofé .ò

The limitation period with regards to the plaintiff in bringing an action talked above is reduced to three months after the normal period provided in the limitation period.

In *Ibrahim v Judicial Service Commission* (*JSC)* judicial effect was given to the above provision of *Public Officers Protect Act* and it was held by the supreme court that by S. 18 of the Interpretation Act. The word ópersonô includes a corporation and that S. 204 POPA covers the act not only made natural person but also of a corporation so that the time limitation imposed by POPA for instituting an action covers the act of a corporation. [354]

The only reason for the above is that threat of litigation should not be allowed to continue to hang over a personôs head. A lot of persons are being denied of their right to sue where the defendant may either be public servants or institution or Government where

[354] (1998) NWLR 584, 1.

pre-action notice may be needed to sue. Although, a pre-action notice has been held not to be an infraction of fundamental human rights nor does it constitute an impairment of access to court of justice since it entails informing the statutory authorities about the intention of the intending plaintiff.[355]

[355] *Mobil Producing Nigeria Unlimited v. Lagos State Environmental Agency & Anor.(2002)18 NWLR(pt.798) p.1*.

CHAPTER FOUR: REMEDY FOR BREACH OF INDUSTRIAL SAFETY

This chapter shall discuss the meaning of compensation before considering the laws that apply to workmen/ employees in Nigeria. The breach of industrial safety laws entitles an injured employee to only one major remedy called compensation. Before January 2011, the law that governed the compensation of injured workmen or employees was the Workmen Compensation Act. The passage of a new law that is the Employees Compensation Act 2010 repealed the Workmen Compensation Act Cap W6 LFN 2004.

4.1 What is Compensation?

The Blackôs Law Dictionary defines compensation ñas payment of damages, or any other act that a court orders to be done by a person who has caused injury to another[356]ò.The Employees Compensation Act 2010 in describing compensation states thus: ñCompensation means any amount payable or service provided under this Act in respect of a disabled employee and includes rehabilitation[357].ò The Court of Appeal in *Zongo v the Military Governor of Kano State and Anor* captures compensation thus: ñCompensation in a wider connotation covers remuneration or satisfaction for injury or damage of every descriptionò.[358] Compensation has also been defined as ñthe value in money to the expropriated owner which will recompense him for what he has lost and may include payment for improvements in certain circumstances[359].

A legal scholar J.M. shish defines ñcompensationò as payment which enables the victim to be sufficiently assuaged by money in another manner by which the injury done to him can be ameliorated.ò[360]

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[356] B.Garner , *Black's Law Dictionary* Supra p.322.
[357] ECA 2010, Pt. 1. S.1(b).
[358] (1986) 2NWLR (Pt.22) p.409,410. Compensation as defined in the above seems too wide these covering ódamage of every descriptionô However Compensation may not be viewed from such an angle because injury arising from sports eg. football, wrestling may not be a subject matter of compensation because such injuries are within the contemplation of the affected parties.
[359] (*E.O.B v Olopinukwu* (1958) L.L.R 25, 26.
[360] J.M.,Shish .,òThe Legal Framework for Community Compensation in Nigeriaò(2004) *Nasarawa State University Law Journal,p.*51.

From the above definitions, compensation can be seen as payment made as a result of an injury sustained by a person. Such payment can be financial or it can be by offering of a service to ameliorate the injury sustained by a person. Compensation as captures by the *Employees Compensation Act 2010* can also be extended to a rehabilitation.

4.2 Compensation Under The Law

Under the common law, an injured worker must prove fault on the part of the employer in order to succeed in a claim for damages, for negligence or breach of statutory duty. Where he failed to prove fault he went home empty handed without considering the gravity of his injuries even life threatening one. On the other hand, the employer, too may resist the claim by showing that the injury or that the injured workman consented to the risks; or by showing that the injured workman was partly to blame for the injury[361]. In order to compensate the victims of industrial accidents, without having to prove fault on the part of the employer, the Workmen/Employees Compensation Act was enacted[362]. The Act has gone a long way in causing the payment of compensation to injured workmen without their proving the innocence or negligence of their employer.

The Workmen Compensation Act Cap W6 LFN 2004which was repealed by the Employees Compensation Act 2010 governed workmen claims before December 2010 when the later was passed. The main features of former will be summarized briefly to bring out the similarities and differences in the both laws.

4.2.1 The Workmen Compensation Act Cap W6 LFN 2004

The Act has 42 sections and 2 schedules. The provisions of the Act apply to a ñWorkmanò A ñworkmanò is defined as a person who has ñentered into or is working under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, or is oral or in writingò[363].

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[361] The above principles have been fully discussed in previous chapters of this work.
[362] Employees Compensation Act 2010 which succeeds the Workmen Compensation Act is the recent Act on workmen Compensation in Nigeria. The first statute on Workmenôs Compensation in Nigeria was enacted in 1941 based on English Workmenôs Compensation Act 1925.
[363] Section (1) of the Workmen Compensation Act Cap W6 LFN 2004.

Such a ñworkmanò, must establish a casual line between the injury sustained and an accident occurring in the place of work. The link is that the accident must have arisen out of and in the course of employment[364] and must have incapacitated the workman for at least three consecutive days from earning full wages at his employment, or unless the injury occurred out of serious and willful misconduct of the workman or unless the injury was fatal or resulted in serious permanent incapacity[365].

To be entitled to compensation under the Act, a workmanôs injury must be personal. That is, it must be an injury to the living body[366]. However to be entitled to personal injury, the injury must not be as a result of deliberate self injury or willful misconduct. Thus the decision of the court in *Ogunisi v Lagos City Caretaker Committee* where the plaintiff a bus inspector employed by the Lagos Municipal Transport Service was injured while attempting to board a moving bus in the course of his employment. An action against the council succeeded and he was awarded a compensation of N1, 209.

On appeal by the council, Taylor C.J. stated in allowing the appeal held that the plaintiff acted unreasonably in boarding a bus in motion. The plaintiff injury was due to his ñwillful misconductò.[367] It is important to note that if the willful misconduct had resulted in death, the court may award compensation or such part thereof as it thinks fit and as provided under *section 3 (2)* of the Act.

The Workmenôs Compensation Act provides for three types of injury and for death. The injuries are:-

- Permanent total incapacity[368]
- Permanent partial incapacity[369]
- Temporary incapacity[370]

The types of injury which may lead to permanent or partial incapacity are as specified in the second schedule of the Act. The court has discretion to award a higher compensation

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[364] Section 3 (1).
[365] Section 3 (2).
[366] B. Atilola, *Annotated Nigerian Labour Legislation* Op cit.p. 439.
[367] Unreported but decided by the Lagos High Court on May 28(as was cited by B. Atilola Ibid).
[368] Section 5.
[369] Section 7.
[370] Section 9.

where the injury, whether listed or not, has particular consequences which having regards to the nature of the workmanôs job, requires extra case. The court played this role in *Ifere v Truffods Nig Ltd.* Where a casual worker who was just a week old in the respondentôs company sustained an injury that led to the damage of his right hand fingers which were amputated and he was paid a sum of N6,109.65 as compensation. Dissatisfied with the amount he filed an action claiming N1, 000,000 a special damages. But the suit was dismissed. On appeal to the Court of Appeal. The court allowed the appeal holding that the trial judgment failed to make correct findings from the abundant evidence before him. The court considered the fact that the man was jobless and had a wife and eight children to take care of and thereby awarded a sum of N300,000.00 in favour of the appellant as a general damages and the sum of N541,000 as compensation under the workmenôs compensation Act by the lower court was upheld[371]

Section 9 provides for compensation when there is temporary incapacity. The payment is full pay for the first six months, fifty percent of basic pay for the next three months if the workman is still incapacited. Where at the expiration of the nine months covered in *Section 9 (1) (a)* the workman has not resumed duties, and compensation due to him has not been determined, the injured workman shall be entitled to a sum equal to one quarter of the monthly salary for the next fifteen months[372]. Any sum paid under this head will be calculated and deducted from any sum payable where the temporary in capacity turns to permanent incapacity.

The above formula was criticized and it seems it was one of the reasons why the Act was amended. Presently a new formular has been put in place in the new law which seems to be a better one because to a great extent it protects the employee rights to compensation. *Section 12 of the Act* provides that compensation payable should be paid to the court where death of a workman has resulted from an injury. This situation has changed because compensation is not handled by court presently but by the Nigerian Social

[371](2008)WRN 30.
[372] Section 9 (2) (c).

Insurance Trust Fund Board[373]. Although the new Act on Compensation of injured Employees goes a long way in protecting the rights of Nigerian employees, yet the issue of entitlements of compensation by the employee may receive some attention in this research. This is because the courts seem not to understand this phrase óAccident Arising out of and in the course of Employmentô and had denied employees their rights to compensation. For the purposes of clarity, this subsection is reproduced here under *section 3 (3) of the Workmen Compensation Act*[374] provides thus:

> For the purpose of this Act, an accident resulting in the death or serious and permanent incapacity of workman shall be deemed to arise out of and in the course of his employment[375], not withstanding that the workman was at the time when the accident happened acting in contravention.
>
> (a) If any statutory or other regulation applicable to his employment or
> (b) If any orders given by or on behalf of his employer or
> (c) That he was acting without instructions from his employer
>
> If such act was done by the workman for the purpose of and in connection with his employerôs trade or businessô.

The leading case in determining when the accident causing the injury will be taken to ó arise out of and in the course of Employmentô is the case of *Smith v Elder Dempster Lines Ltd.* In this case, the plaintiff was a daily ï paid casual worker employed by the defendant. At the end of a dayôs work, the plaintiff had permission to use the defendantôs tug to get to land. On this day there was another tug tied alongside the defendants own, while trying to jump into this other tug as a means of accessing the employerôs the plaintiff fell into water and dislocated, his shoulder. In an action against the defence the Magistrate Court awarded him compensation but the award was overturned by the Supreme Court the court in his view said:

The general rule is that a manôs employment does not begin until he has reached the place where he has to work or the ambit, scope or scene of his duty and it does not continue after he has left it and the periods of going and returning are generally excluded. There are exceptions to this rule but the only ones with which we are concerned in this case are

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[373] The functions of this board shall be discussed later in this chapter.
[374] Cap W6 LFN 2004.
[375] Emphasis mine.

those that relate to the provision of transport and means of access to and egress from the place of work.[376]

The court in the above decision seemed not to think that the case fell within any of the two exceptions and unfortunately, the decision had put the law ñin a strait jacketò[377] and unreasonably, has received some scant criticism. Thus the legal luminary A.A. Adeogun in his view opined inter alia thus;

> But with respect, it is difficult to accept this conclusion for if his act was not a physical removal of himself from his place of employment what else is? True, he had left his actual place of work, that is the ship, but he was still on the wharf which he had to use in order to get to whatever means of transport that would take him home. é It may well be that the applicantôs case has no particular merits of its own by attempting to jump into another tug in order to get into the employerôs tug; but to hold that his employment for the day had ceased merely by his leaving his actual place of work, although still in its immediate area, where he must be to get away, is patently unsound.[378]

The study agrees with the view expressed above, the principle in *Smith case* is in my opinion, too narrow and not to the best interest of workers. Another case where the decision in *Smith* was followed was the case of *Scandinavian Shipping Agencies v Ajide* where the workman was already safely seated inside the boat provided by the employer, to take workers from Apapa Wharf, at the end of the dayôs work, to Lagos. He was thrown overboard and drowned when another workman tried to jump into the boat as it was moving, holding on to the deceasedôs clothes. Both workers drowned in the lagoon. The Magistrate court held that the injury arose out of the course of employment but the appeal was upheld and the decision over turned. Thus the dependant of the deceased workmen went home without any compensation.[379]

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[376] (1944)17 N.L.R.145.
[377] C..Kanu Agomo ., ó*Nigerian Employment and Labour Relations Law and Practice* Op.Cit p. 232.
[378] A.A.,Adeogun ,ñThe Enforcement of Labour Laws and Economic DevelopmentòLecture delivered at Workshop on Law and Economic development, *Nigeria Institute of Advanced Legal Studies(1982)*p.61 Cited in C.,Kanu Agomo Op cit p.233.
[379] (1965) L.L.R 247.

Adeogun in his view said[380] ñIt is perhaps cold comfort to the claimant to tell him that decision to deny him compensation was taken with the greatest reluctance, more so that it cannot really be said in this case that the deceased had actually left the area of his employment when the accident occurredé ò

The Employees Compensation Act which governs compensation in Nigeria is a new law and it is believed that when such issues as discussed above arise that the court may differ in its decisions because the new Act seems to protect the interest of the workers more than the Workmen Compensation Act. The Employeeôs Compensation Act 2010 will be discussed hereunder.

4.2.2 The Employees Compensation Act 2010

On Monday 17 January 2011, a Bill initiated by the Nigeria Social Insurance Trust Fund (NSITF) known as ñEmployeesô Compensation Bill was signed into law. It seems to be a significant step towards the fulfillment of the governmentôs promise to provide a better working condition for Nigeriaôs workers. The Explanatory Memorandum states that it repeals the Workmenôs Compensation Act and provides for comprehensive compensation for any death, injury, disease or disability arising out of or in the course of employment. From the preliminary provisions, the objective of the Act among others is to provide an open and fair system of guaranteed and adequate compensation for employees or their defendants in the event of death, injury, disease or disability arising out of, or in the course of, employment. The Act is also intended to provide for safer working conditions for employees by ensuring that all relevant stakeholders contribute towards the prevention of workplace disabilities and other occupational hazards.

4.2.3 Analysis of the Employees Compensation Act 2010

The Employeeôs Compensation Act (herein after known as ñthe Actò or ñECAò) 2011 repeals the Workmenôs Compensation Act (WCA) of 2004. The Act has seventy-four sections (74) with two schedules. The key provisions of the Act are discussed hereunder.

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[380] Adeogun, locit at p. 62 cited in C.Ogomo. Supra p. 235.

The Act defines an ñemployee ñas;

> 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.[381]

The provisions of the Act are therefore, applicable to all employers and employees in the public and private sectors of the economy with the exception of the members of the Armed Forces who are not employed in a civilian capacity, and who are not statutorily covered under the provisions of this Act. The Act provides also for the compensation of employees (or their dependants) in respect of incidents such as death, injury or diseases that may arise out of, or in the course of, their employment.

4.3. Establishment of the Nigeria Social Insurance Trust Fund Management Board ("The Board") and the Employees Compensation Fund ("The Fund")

The Act saddles the Board with the responsibility of co-ordinating and implementing the provisions of this Acts managing the fund and compensating employees (or their dependants) out of the fund, in the event of injury, disability or death.[382] The fund is to be financed with a take-off grant from the Federal Government and through mandatory contributions by the employers, gifts and grants from national and international organizations and proceeds derived from investment by the Board[383]. An independent Investment Committee (ñthe committeeò) established under the Act will act in an advisory capacity to the Board[384].

4.3.1. Contribution to the Fund

Every employer is required to keep complete and accurate particulars of its pay roll. *Section 33 of the Act* provides that every employer shall within the first two years of the commencement of this Act make a minimum monthly contribution of 1% of the total monthly payroll into the fund. After the first two years, the Nigeria Social Insurance

[381] Section 73 of the Act.
[382] Section 2 of the Act.
[383] Section 56 of the Act.
[384] Section 62 of the Act.

Trust Fund (NSITF) is authorized to ñé assess employers for such sums in such manner, form and procedure as the Board may from time to time, determine for the due administration of the Actò[385].

However, the Board may by regulations determine the actual contribution or rate of contribution to be made by each employer, which will vary based on the categorization of the risk factors of the particular class or sub class of industry to which the employer belongs[386]. The Act also provides that the Board shall assess employers, in the first instance, based upon estimates of their payroll for the year or as determined by the Board. The payment of the said assessment shall be due on 1st January in the year or as determined by the Board. The payment of the said assessment shall be due on 1st January in the year for which it relates[387]é The Board may also approve payment of the contribution in installments. Where however an employer is not assessed by the Board, the employer shall be liable for the amount for which it should have been assessed or as much as the Board considers reasonable and payment of that amount may be enforced as if the employer had been assessed for that amount[388]. The payments made by each employer are to be credited to each employerôs ñExperience Accountò (EA) maintained by the Board. The EA will indicate the assessments levied on the employer and the cost of all claims chargeable in respect of the employer[389]. An employee is not permitted to agree with his employer to waive or forgo any benefit or right to compensation to which he or his dependents is or are or may become entitled to, under the Act. Any agreement in respect of such waiver shall be void and unenforceable[390].

4.3.2 Injuries Occurring Outside the Normal Workplace

Section 11 of the Act provides for compensation of employees for occupational diseases and injuries sustained outside the normal workplace if the

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[385] Section 34 (1) of the Act.
[386] Section 36 (2).
[387] Section 35 (1).
[388] Section 36 (2).
[389] Section 41 of the Act.
[390] Section 13 of the Act.

- nature of the business of the employer extends beyond the usual workplace; or
- nature of the employment is such that the employee is required to work both in and out of the work place.
- Employee has the authority and/or permission of the employer to work outside normal work place.

As stated earlier the provisions of *Workmen Compensation Act*[391] and its interpretation by the Act have been narrowly applied. But the *Employees **Co**mpensation Act 2011 in Sections 7 and 11* extend the scope of compensation when injuries occur provided it occurred in the course of employment. For clarity the provision of *section 7 is* here under stated:

ñ*7 (1)*

Any employee, whether or not in a workplace, who suffers any disabling injuring arising out of or in the course of employment, shall be entitled to payment of compensation in accordance with part IV of this Act.

(2) An employee is entitled to payment of compensation with respect to any accident sustained while on the way between the place of work and;

(a) The employeeôs principal or secondary residence,

(b) the place where the employee usually takes meals or

(c) the place where he usually receives remuneration, provided that the employer has prior notification of such placeò

The combined effects of the above sections seem to have really widened the scope of employersô liability and thereby overturns the judicial narrow definition of what constitute workplace injury[392].

In the case of *Chaguary v. Yakubu* where armed robbers shot a driver attached to one of the executives of the company and one pellet was left in his body. The driver instituted an action claiming for special damages of fifteen million naira (15,000,000.00). The high court awarded him 300,000.00 but on appeal the court of

[391] Section (3) (3) of WCA.
[392] C.,Kanu Agomo, Opcit p. 236.

appeal held that no compensation would have been awarded because no finding of negligence was made.[393]

Another pathetic case is the case of *Anike v SPDCNC* where the employee was bitten by a dog and he died afterwards. The High Court refused to award compensation against the employer because the deceased employee was a policeman and the Workmen Compensation Act[394] does not apply to men of the Force. The court did not consider the incident that lead to the death of the deceased or any other factor but vehemently denied the deceased widow compensation.

These decisions may not be sustained today with the provisions of the ECA 2010 because the law has widened the ambit of the law with the combined effect of the sections. It is hoped that Employees Compensation Act will reignite judicial activism in this aspect of employment law.[395]

More so, payment under *section 7* is made in respect of an injury on the first working day following the day of the injury ó this is unlike the position under the *Workmen Compensation Act*. But it is only a health care benefit that shall be payable in respect of the first day of the injury or disease provided, the disease is caused by an accident and the accident arose out of employment, or occurred in the course of employment. With the above provisions, the heavy burden placed on an injured employee under the *Workmen Compensation Act* is to prove that the accident which caused the injury not only arose out of, but also occurred in the course of the victimôs employment seemed to have been removed. Therefore, it is believed that when some of the cases discussed under *Workmen Compensation Act* come to court these days that the court may reverse its decision.[396]

4.3.3. Assessment of an Independent Contractor/Subcontractor

[393] (2006)3NWLR138.
[394] Cap W6 LFN (2004) .
[395] Sections 7 and 11.
[396] Writerôs view.

Where any person or organization employs an independent contractor, or performs a work under a subcontractor, the person, the independent contractor, principal, contractor and subcontractor will be jointly and severally liable for any assessments relating to that work. The principal or contractor may therefore without an amount from any money payable to the agent or subcontractor, in order to make payments to the Board. Such amount paid to the Board will be deemed to be a payment on the contractor or subcontractor[397].

4.3.4. Payment of Compensation to Employees

The Act provides for payment of compensation to dependants of a deceased employee whose death is due to an occupational injury[398]. Payment of compensation is made also to employees suffering from mental stress[399], occupational diseases and injuries[400] and hearing impairment[401]and even for rehabilitation of employees affected by work related disabilities including mental illness[402]. This provision is new and laudable and has added a plus to the welfare of the employees. The Board is also empowered to provide health care and disability support to employees, in addition to compensation payable to them[403]. For an employee or his dependent to qualify for payment the claimant in this case is required to inform the employer by providing necessary information to the appropriate representative of his employer within 14 days of occurrence of the event or receipt of information of its occurrence[404]. The employee (or his/her dependant) is also required to file an application for compensation in the prescribed form within one year after the date of occurrence of the event. No compensation shall be payable if the application is not filed within one year after the death, injury or disability, except where the Board is satisfied that there existed special circumstances which precluded the filling of an

[397] Section 44 of the Act.
[398] Sections 7 of the Act.
[399] Sections 8 of the Act.
[400] Sections 9 of the Act.
[401] Sections 10.
[402] Section 16.
[403] Sections 26.
[404] Section 4.

application within one year after the event occurred[405]. In that event, payment would be made if the application is filed within three years of occurrence of the event. However, payment would not be made if any application is filled beyond this date except;

a. ñSufficient medical or scientific evidence was not available on those dates for the Board to recognize the disease as an occupational disease and this evidence became available at a later date; and
b. The application is refilledò[406]

The employer, on the other hand is required to report to the Board and the nearest office of the National Council for occupational Safety and Health (NCOSH) in the state, any employment related injury or disease, or any claims for these by an employee, within 7 days of the occurrence, or of receiving information about the occurrence. The notification is to enable the Board to verify if the injury or disease for which a claim for compensation is raised has been reported to the National Council for Occupational Safety and Healthôs office in the state prior to the settlement of such claim[407]

4.3.5 Scale of Compensation

The scale and administration of compensation under the ECA mark a distinct and fundamental departure from the regime under the *workmen's compensation Act.*

This Act that is the Employees Compensation Act provides for a lifetime and a short period payment as may be proved by the Board through regulations[408]. The lifetime payment may be made monthly to the dependants of a worker whose work place injury results in death ranging from 90% to a sum not less than 30% of the remuneration of the deceased. The exact amount would depend on the degree of dependency, number of dependantsô[409] relationship and the ages of dependants.

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[405] Section 6.
[406] Ibid.
[407] Section 5.
[408] Section 19.
[409] Sec 17-19.

Compensation for occupational disease as provided in *Section 9 of the Act* is laudable. According to Agomo[410] the shag is that there is often a time lag between the exposure and the onset of the disease which may make it difficult to establish a direct link between the disease and the exposure. The Act attempts to remove the clog by providing that the date of disability is to be taken as the date of occurrence of the disability[411].

4.3.6. Right of Appeal by Employers/Employees

The Act makes provision for the employers or the employees to appeal to the Board for a review of the decision of the Board. This appeal shall be made in writing within 180 days of the receipt of the Boardôs decision. Further appeal shall be to the National Industrial Court[412].

4.3.7. Penalties for Non-Compliance

Penalties for non-compliance under the Act include:

(i) Where an employer fails the required payroll information available to the Board, the employer may be liable to pay the provisional/best of judgment assessment levied by the Board, and a penalty, calculated as a percentage of the assessment to be determined by the Board. In addition, the employer (if an individual) or its directors (if a company) may be liable to imprisonment for a term not exceeding one year or a fine of not less than N1,000,000 (1million in the case of a body corporate) or both, upon conviction[413].

(ii) An employer is precluded from deducting, either directly or indirectly, any payments made to the Board from the remuneration payable to its employees. Contravention of this requirement by an employer attracts upon conviction, a fine of not less than N1,000,000 (1 million in the case of a corporate employer) and repayment of any amount deducted from the relevant employee[414].

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[410] C. Kanu Agomo Opcit P.237.
[411] Sec. 9 (2) of the Act.
[412] Sec. 9 (2) of the Act.
[413] Sec. 39 (2) 3 & 4.
[414] Sec 14 (1) (2) (3).

(iii) The penalty for non-payment of an assessment or non-provision of a security against an assessment required by the Board is 10% of the unpaid assessment or the value of the security required[415] .

There are some gaps which one believes will be filled by the judiciary in court when the Act comes for interpretation. The findings will be discussed later in the research.

4.4. Compensation to Specific Employees

Occupational hazards are almost inevitable no matter the safety measures one puts in place. However it seems that some employees in Nigeria are exposed to greater risks at work place and it behooves on the government to develop ample social security measures to safeguard such employees.

4.4.1. Compensation of Health Workers

In recent times, the health workers in Nigeria were faced with the enormous occupational health and safety challenge of coping with the scourging and ravaging diseases. One of these highly communicable and deadly diseases is Ebola Virus Disease (EVD). The health workers are more susceptible to EVD because they always make contact with the patients at the acute stage when the disease is highly infectious.

A lot of Nigerian Medical Health workers are victims of many dreaded diseases contracted in the course of their work and the big question is what is the government of Nigeria doing to protect the life of her citizenry who are exposed to this hazards at work places?

The recent outbreak in Nigeria which was caused by a Liberian American Patrick Sawyer in July 2014 had close to 20 cases of confirmed EVD including the index case. However among the six that died, 3 were medical personnel, the bravest Dr. Stella Ameyo Adedavoh, Chief Consultant at First Consultant Hospital Lagos who led the team that treated the index case, Justina Obi Egelonu a nurse who contracted Ebola on the first day

[415] Sec. 46 of the Act.

at work and another nurse whose name was not mentioned[416].During the outbreak of Ebola in 2014, it was reported in the Newspaper that about 120 health workers died from EVD.[417]

In an open letter signed by the President and General Secretary of National Association of Nigeria Nurses & Midwives (NANNM), the Nurses stated inter alia:

> ñé the urgent need for governments be it Federal , State or Local governments to intensify efforts at protecting and adequately providing the Nigerian nurse with standard Personal Protective equipment and must be made available to nurses and health workers in all hospitals to avoid more casualties.
> é This brings to fore the long agitation by the nurses for the Federal and State governments to pay adequate hazard allowances and insure all nurses in Nigeria. The current lip service by the Federal government to insure nurses and health workers who are involved in the treatment of Ebola virus patients is not acceptable to NANNM. We demand that the insurance policy papers must be made open to all Nurses / Health workers if they must risk their lives.ò[418]

The Nigerian Labour Union had the same view in their sensitization workshop it`s time government engaged the doctors further , providing them the necessary insurance covers to deal with the latest menace of Ebolaé ò[419]

More so, Dennis Zulu in his view maintained that workers need to be protected from Ebola as ñEbola outbreak is not just a public emergency ï It`s an issue of occupational safety and health[420].The high time for the government took tangible steps to the occupational health and safety of health workers in order to protect and preserve the soldiers at the medical war front.

Although the disease was contained in Nigeria, yet other African countries like Liberia are not free from the threat of the monster and usually the medical personnel are always the first hit.[421]

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[416] Oyesola B.`ò Day Workers Rose Against Ebolaò *DailySun*(Lagos ,25 August 2014) 53.
[417]Ikuomola V.,ñEbola has killed 120 health workers-WHOò *Daily Sun* (Lagos ,6 September,2014) 6.
[418]Abdrafiu A.A.&Yusuf B.ñThe Nigerian Nurseò *Daily Sun*(25,August 2014),43.
[419]Oyesola B.Op.cit.
[420] Zulu D.,Chief Program Officer for Nigeria,Gambia,Ghana,Liberia and Sierra Leone.ñProtecting Workers from Ebola Outbreakò *The Daily Sun*,(Lagos , 9,September,,2014).45.
[421]This was evidenced by the reoccurrence of the disease in 2016 even after WHO had declared Liberia free from Ebola. ñNew Positive Case of Ebolaò www.who.int>news>statement>Liberia.(Accessed 6/10/16).

Journalists in Nigeria face danger and death on line of duty yet there are no corresponding investigations detailing the causes of their death[422].

It was further reported that one Yomi Olomofe of Prime Magazine was thoroughly battered at the office of the Nigeria Customs and Excise while trying to investigate a mater.[423]

In the reporterôs view, ñNigeria remains a dangerous place to practice journalism, with the spike in unsolved killings, earning Nigeria a place on the Committee to Protect Journalistô Impunity (CPJI) Index for the first time in 2012ò

According to the Director International Press Centre (IPC), on safety of journalists, he quoted a survey carried out in Nigeria which stays that between November and December, 2014, there were attacks on 17 journalist at separate locations[424].This is really surprising because the rate is quite high. The question is, do these journalists have the fundamental right to life and right to safety at their work places?

In spite of these recent happenings which have brought to the fore the insecurity associated with the practice of journalism in Nigeria, the government seems unperturbed about their plight. On the AIT news recently, a civil society group was of the view that the welfare of the media personnel should be improved giving them a monthly allowance of 250,000.00(two hundred and fifty thousand Naira) and compulsory life and health insurance scheme should be made available to them.[425]Arogundade on this view contended that Federal Government should come up with a functional national insurance scheme for journalists, working in Nigeria in view of the increasing threats and attacks. He said national security was not the responsibility of security agencies alone, insisting that it was also a matter of collective responsibility, which requires the active role of the press.[426]

Also there must be concerted efforts to ensure that life and property of the general public in Nigeria is guaranteed. Nigeria can borrow a leaf from Cairo Egypt where journalists

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[422] Igomu T.,ñHunted and killed for Journalismôs Sakeò*The Daily Sun,(*Lagos,(29,August 2016)38.
[423] Ibid.
[424] Ibid.
[425] Ayodele E.,the Convener of a Civil Society group known as Godly Values held the view on AIT 8pm news broadcast on the 28th of September,2016.,
[426] Igomu T. Op.cit.p.39.

are paid a percentage of their basic salary as risk allowance before they go to cover stories in dangerous zones such as war prone areas[427].

This chapter has x-trayed the compensation of an employee when industrial safety laws are breached in Nigeria by analyzing the laws that relate to compensation. It is believed that all and sundry will put their hands together to improving the safety of Nigerians at work.

[427] Journalism in Nigeria: The Struggle Continuous (9th March 2012) available at http://wwwnationalaccordnewspaper.com/index.php?option=com_content &view=articles&id=5818 (Accessed 9th March 2016).

CHAPTER FIVE ENFORCEMENT OF THE RIGHTS OF AN EMPLOYEE

An employeeôs rights to safety of his life at workplace are fundamental in every aspect. As already discussed in this research employers are liable when any of the safety laws are in breach.

However, the enforcement of the rights of an employee becomes an issue considering the circumstances that surround an employee in Nigeria. Thus with the unemployment that is ravaging the economy; the fear of losing oneôs job without any job benefits and the difficulty and almost the impossibility of getting new jobs in the country make enforcement of the right of an employee a difficult phenomenon.

5.1 Meaning of Enforcement

Enforcement is defined as the act or process of compelling compliance with a law, mandate, command, decree or agreement[428].

Enforcing the rights of an employee is fundamentally the duty of the government because the government is supposed to be a custodian of public good. It therefore behooves on the government to take affirmative action to ensure that these rights are fully exercised by the employee. Within the context of liberal democracy, government owes its citizens the duty of care and this can be done through labour legislation. According to Marcello Malentacchi ñthe fundamental principle of labour legislation is to guarantee the weaker party in the labour market protection and basic rights in order to be in a fair position when negotiating salary and working conditionsò[429].

The agency of government charged with the responsibility of ensuring that employment relations unfold within the legal framework and without jeopardizing the production of goods and services in Nigeria is the Federal Ministry of Labour and Productivity. There is equally a mechanism for monitoring compliance through the inspectorate services unfortunately the effects of these ministries are not felt. This is because the ministry seems to be doing little or nothing in seeing that the rights of the employees are enforced.

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[428] B.A.,Garner ó Blackôs Law Dictionary Op.cit p.608.

[429] As was cited in Adewuni F. et al ó*The State of Workers Rights in Nigeria*: An examination of Banking, Oil and Gas and Telecommunication Sections (Abuja: Fredrich Ebert-Stiftung Nigeria (2010) p. 57.

The employers on the other hand take advantage of the weak institutional and regulating frameworks to the detriment of their employees. A greater percentage of employers in Nigeria would not allow unionism because they seem to see unionism as a threat. However without the union or any collective platform to address common interests, employees would become more vulnerable, while management assumes unfettered control of the labour process and employment relationship.

As it seems the government is paying lip service in the enforcement of the rights of employers, which is evidenced by the weak institutional capacity and the unequipped labour administrative system. The responsibility and also lack of political will on the part of the government to protect its worker citizen through enforcement of a proper legislation.

On the other hand, the prevailing reality in respect of workerôs right is not because the unions do not try but the unions need to promote inclusiveness and internal democracy in order to endear themselves more to workers[430]. The unions in exercising their rights must do that within the ambit of the law. To ensure the enforceability of the workersô rights.
The Comprehensive Bill on Health and Safety already passed by the National Assembly should meet up with the current industrial challenges in the labour environment when passed into law. It is hopeful that the Legislative Arm will exercise their constitutional right to seeing that the Bill becomes an Act of the National Assembly.[431]Much more is expected from the trade unions and labour unions in as much as the task of defending workers should not be left in their hands alone. The labour administration anchored by the Ministry of Labour and Productivity should be more alive to its responsibility of ensuring compliance with existing labour standards and ensuring that workers rights are protected. In this regard, the inspectorate department should be strengthened with adequate human and material resources to cope with the demand of the office.

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[430] Ibid p. 71.
[431] The new bill signed into law since 2013 has not received the Presidential assent. However Section 58(5) of the constitution as amended empowers the National Assembly to enact laws.

There is also the need to educate the workers more on their rights as provided in the statutes by unions and other organizations like Non-governmental Organization (NGO) to reduce infringements by workers themselves. These agencies can also help in the enforceability of the rights of the workers by offering legal services or other social assistances to enable the workers fight for their rights when necessary.

Workers should also be educated on the area of dignity of labour to change their general perception of work. Enforceability of the rights of the Employees/workers in Nigeria is not an impossibility but can only be feasible with the joint efforts of the stakeholders.

5.2 The Jurisdiction of the Court in Industrial Safety Matters

The court that has the jurisdiction to entertain industrial safety matters is the National Industrial Court. The Trade Dispute Act (TDA) 1976 as amended in its part II provided for the establishment of the National Industrial Court[432]. The Act ôThe National Industrial Act, 2006 establishes the court known as the National Industrial Court (NIC). The court is a superior court of record and now has all the inherent powers of a High Court as well as immunity for the judicial officers[433].

Section 7 (1) (11) provides that the court shall have exclusive jurisdiction in civil cases and matters:

(a) Relating to

(i) Labour, including trade unions and industrial relations; and

(ii) Environment and conditions of works, health, safety and welfare of labour and matters incidental thereto; from the above provisions; it is quite clear that for industrial safety matters, it is the National Industrial Court that has the exclusive jurisdiction.

[432] Section 20 (I) of the TDA Cap T8 LFN 2004.
[433] Section 52 (i) of the National Industrial Court Act, 2006.

5.3 Exclusion of the Rights of the Employee by Agreement in Industrial Safety Matters.

The right to health and safety is paramount not just to the worker or employee but also to the entire society at large[434]. In some countries like Indian, the issue of safety is fundamental and is provided in their constitution as such[435]. In Nigeria, the right to Health and safety is provided in *Section 17 (3) (c) of the 1999 Constitution as amended* and in our constitution, it is non justiciable. The question that arises is whether the rights of the employee can be excluded by agreement being a non-fundamental right? Before this question is answered, it is expedient to understand the meaning of fundamental rights. In simple terms, they are God given rights, natural and inalienable rights which cannot be denied one under normal circumstances[436].

In the case of *Odogwu v A/G Federation*[437] the Supreme Court defines a fundamental Right as; ñA fundamental right is a right guaranteed in the Nigerian constitution and it is a right which every person is entitled, when he is not subject to the disabilities enumerated in the constitution to enjoy by virtue of being a human being. They are so basic and fundamental that they are entrenched in a particular chapter of the constitutioné ò[438]

Under the constitution, these rights are provided in sections *33 - 46 of the 1999 Constitution as Amended*. Some of these rights are right to life, right to dignity of human person, right to personal liberty, right to freedom of association and so on. The right of an employee to health and safety is not a fundamental right. It is covered under the

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[434] *Chemical & Non Metallic Products Senior Staff Association v Benue Cement Company Plc.* K. Oluwolu, *Digest of Judgment of Industrial Court Locit P. 416 at 42.*

[435] Chaturveedi P. ñ*Occupational Safety Health & Environment and Sustainable Economic Development*,ò [New Delhi, Op.cit p.7.

[436] This right can be denied if a citizen breaks the law in one way or the other. Example by committing a crime, the right to personal liberty may be denied.

[437] (1996) 6 NWLR Pt (456) 508.

[438] Chapter 4 of 1999 Constitution as amended.

Fundamental Objectives and Directive Principles of State policing and as already stated they are not justiciable. [439]

In Britain the statutory employment protection rights like the right to health and safety are immune from modification by the contract of employment[440]. This means that the contract of employment protection rights cannot be modified in any way even by agreement of the employer and the employee. The *Employees Compensation Act 2010* provides in *section 13 (1) & (2)* that any agreement by the parties to waive the right of compensation shall be void and unenforceable.

Although the *Employee Compensation Act 2010* is not a statutory employment protection law so to speak yet it relates to the employees because it is a comprehensive compensatory employment Act. Therefore one will rightly hold that since a Compensation Act will exclude the right to waive the right of the employee by agreement it follows and even with more weight that a protective employment Act would so hold.

More so, the right to health and safety of employees has a link to right to life of employees and it should be treated as a fundamental right even though it is not so stated in our constitution. This is because where the safety of individuals at work places is jeopardized workers lives will be threatened and thus the right to life will be indirectly denied.

However, with the high rate of unemployment and under employment in Nigeria today, which make citizens accept all manner of employment with little or no consideration on the occupational hazards; workers education becomes expedient. The courts on the other hand should borrow a leaf from India where an activist judiciary compelled the government to enforce certain aspects of the Directives Principles of State Policy. The

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[439] They are not inalienable rights as they are enshrined in Chapter 2 of the Constitution.

[440] Morris G.S., "Fundamental Rights: Exclusion by Agreement" *Britain Industrial Law Journal*, (2001) p. 49.

resort to affirmative actions to promote economic social and cultural rights was acknowledged by a frontline jurist[441] when he said:

> ñThese three categories of human rights depend fundamentally on the right to life and personal liberty which is a core human right. The right to life is now confirmed merely to physical existence but it includes also the right to live with basic human dignity with the basic necessities of life such as food, health, education, shelter etcé These human rights fall within the category of social and economic rights and they can be realized only by affirmative action on the part of the state and if the state fails to carry out its constitutional or legal obligations in enforcement of these human rights, it may have to be compelled to do so by an activist judiciary. We in India have done so, by compelling affirmative state action in cases where the state was under a constitutional or legal obligation to do so.ò

Employing judicial activism to enforce the Directive Principles of State Policy has a lot of limitation thus the constitution of South Africa has specifically provided for the justiciability of socio-economic rights like the right to health and safety in our law.

Thus in the case of *Government of the Republic of South Africa v Grootboom* the court held inter alia:

> Our constitution entrenches both Civil and political rights and social economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundation values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enriched in chapter 2. The realization of these rights is also the key to the evolution of a society in which men and women are equally able to achieve their full potential. Socio economic rights must all be read together in the setting of the constitution as a wholeé .[442]

The view of the court above is true and could be imbibed in Nigeria if the citizens should enjoy the socio- economic rights like the rights to health and safety[443]. Although our law does not make provisions for waiver of the health and safety rights by agreement, yet the importance of the right to health and safety should not be jettisoned by any agreement of any sort.

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[441]. Bhagwat P.N; ñDeveloping Human Rights Jurisprudenceò Common wealth Secretariat Publication, (1988) P. XXII ï XXIII) cited by Femi, Falana, in ñFundamental Rights Enforcementò [Lagos: Legal Text Publishing Company Limited 2004] p.10.

[442] (2001) 36 WRN 137 at 162-163 Ibid p.11.

[443]Writerôs view.

CHAPTER SIX: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

6.1. Findings

From the analysis of Nigerian industrial laws, the followings are the findings:

Factories Act seems to be the most comprehensive legislation for the protection of workers employed in factories who are endangered because of occupational hazards. It is primarily a penal statute that it prescribes criminal sanctions for any breach or contravention of its provisions. It does not directly make an employer or occupier of factory liable in damages to a workman for any injury suffered as a result of a breach or contravention by the employer or occupier of the factory but with the new law Employees Compensation Act 2010 damages can be adequately awarded for an injured employee.

Factories Act like any other Act suffers lack of adequate enforcement machinery because of unemployment and severe economic hardship. These seem to make most workers carryout dangerous processes without safe means and appliances just to earn a living. There is therefore need for regular inspection of factories and timely prosecution of offenders. In this regard, the duties of inspectors of factories should be shared with relevant local authorities as Local Government Councils and Environmental Sanitation Authorities, which already have safety and health enforcement duties under existing laws. This can easily be achieved through an appropriate order made by the Minister of Labour and published in the Gazette, making appropriate local authorities responsible for enforcement of the Act.

The duty to provide and maintain safe means and appliances should be extended to operators for recreational and educational institutions where any equipment is installed for recreational purposes. Recently, the unfortunate incident that claimed the lives of two little children of the same parents at Oakland Amusement Park Ebeano Tunnel Enugu could be linked to lack or inadequate safety measures in place at the recreational

centre.[444]The children were on the Tea Cup Ride when the accident occurred which took their lives and left five badly injured.

It seems that there were no safety gadgets like helmets to protect the children from any possible accident. In ownerôs words in said inter aliañ é we have a trained first aid experts é but the injuries were so serious that we had to evacuate the childrené ò[445] More stringent safety proactive measures should be put in place in recreational places to avoid the reoccurrence of such incident in the nearest future.

Similarly, the duty to fence should be extended to every dangerous machinery and not just ñevery dangerous part of any machineryò. This will remove some of the absurdities resulting from the interpretation of the fencing provisions by the courts.[446]

Finally, provisions should be made for every employer or occupier of a factory to establish a safety committee comprising employerôs and workersô representatives. The committee should be responsible for assisting in the development of safety rules and safe system of work; periodic inspection of the work place, plant, equipment and amenities, keeping adequate registers, notices and other records required to be kept and preserved under the Act or any regulations or order made under the Act; investigating accidents and cases of dangerous occurrences and diseases; and performing such other function as may be required to give full effect to the provisions of the Act.

On the Employees Compensation Act 2010, there is no doubt that the Act improved on the Workmen Compensation Act Cap W6 LFN 2004 under which an employer could be absolved from responsibility to compensate its employees. Where it could be proved that the injury to the workman is attributable to the serious and willful misconduct of that workmanò. Also the Act covers all employees unlike *Workmen Compensation Act* which applied only to ñWorkmenò. The Act is a new law and seems not to have received

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[444]Ogbeche D.ñHow Two Sisters Died in Enugu Amusement Park, 5 injuredò Daily Post.ng/é /how-two-sisters-died in Enugu.July,16,2016.(Accessed 8th October,2016).

[445] Ibid.

[446]Section 19 of the Factories Act. *John Summers & Sons Ltd v Frost (Op.cit)* p.751.

judicial interpretation, however, the implementation of the Act in its current form may be challenging having regard to the following;

(a) The Act seems to have over empowered the Nigeria Social Insurance Trust Fund(NSITF) Management Board to assess employers for such sums and in such manner as the Board may from time to time determine including establishing a minimum assessment. However, where the assessment is not asked by the Board, the employer is regarded as liable for the amount for which the employer should have been assessed. Payment may be enforced as if the employee had been for such amount[447]. There is also a provision for minimum assessment and this shows that there seem not to be a limit to the assessment by the Board. The Act does not require any self assessment, punishing the employer for the failure of the Board to issue assessment at the right time is weird.

Every Employer is required to provide signed copies of its payroll not later than 31 December each year and not later than the last day of February each year or such other time as may be prescribed by the Board. In addition, employers are to provide a statement of total earnings payable to employees for the current year and nature of work activities[448]. An employer who has just commenced a business, recommences or ceases to be an employer is required to provide the statements within 30 days of commencement, recommencement or creations as the case may be. Payment of assessment is due on 15 January in the year for which it relates while penalty and interest for default will be charged at a rate to be determined by the Board[449]. This is another blank cheque considering that another section provides for penalty of 10 percent on unpaid assessment.

1. *Section 33 (1) of the Act* provides for a minimum monthly contribution of 1% of employerôs monthly total pay roll to the fund.. It also stipulates that payment of any assessment made under this section shall be due on 1st January of the year to

[447] Sec 35 of the Act.
[448] Section 39-40.
[449] Section 50 & 51.

which it relates, which suggests annual, rather than monthly contribution to the fund. There seems to be a conflict, hopefully, the conflict may be resolved in due time. The discretion given to the Board to make regulations prescribing the categorization of risk factors of each class or sub-class of industry, sector or workplace and the amount of contributions/rates of contribution to be made into the fund means that the Board can do and undo. All these seem to show that the powers of the Board are too enormous under the Act.

2. Requiring employers to bear directly the cost of their employeesô compensation through monthly contributions to the fine, rather than place the risk with the Insurance Companies as was the position under the repealed Workmen Compensation Act appears to be uncalled for and is a departure from global best practice. This in no doubt will increase the cost of doing business in Nigeria.
3. Making an organization and its independent contractor to be jointly and severally liable for an assessment under the Act appears to be unduly burdensome as each employer and its employees are identifiable and should be made to bear the consequences of non-compliance with the Act.
4. Contributions under the Act could be said to qualify as tax since it is compulsory and covers all employers including those engaged only in white-collar job. This adds to the number of taxes payable by over-burdened employers without any concrete benefits to the employees so to speak. Some employers may likely reduce work force and salaries or hold back on future increase. The one million dollar questions that arises is ñcould it be said that the Act is in the detriment of the employees or in their interest?
5. The issue of corruption which seems to have eaten deep in the economic system of this country makes one to nurse a doubt as to the implementation of the duties of the board as provided in the Act. Going by past performances, it is difficult to believe that Nigeria Social Insurance Trust Fund will perform better than insurance companies in terms of efficiency and timely payment of compensation. Will the board members perform differently or will the experience be same with the head of pension, oil subsidy scam and so on. Could one rightly say that the

only beneficiary of the new Employees óCompensation Act is the Nigeria Social Insurance Trust Fund who now has another opportunity to solely manage some funds rather than compete with the private sector for pension fund administration.

6. Looking at the Act generally it appears that it focuses on compensation with no efforts made to prevent injuries at workplace. According to the Chairman of Rivers State Council of Trade union Chika Unegbu ñthe risk would be overwhelmed due to high safety lapsesò.[450]

   The new bill on Occupational health and safety already passed by the National Assembly is believed will go a long law in preventing injuries at work place if signed into law. With this the Employees Compensation Act would be very effective.

7. The Act does not seem to cover spouses in polygamous marriage. *Section 17* of the Act only covers a widow or a widower. Does this mean that where the employee is a husband of more than one wife he leaves dependants wholly dependent on his earnings and more than one wife, only one of the wives would be compensated? It is hoped that the court would give a broader interpretation to this section to avoid the compensation posing a problem in polygamous families.

6.2 Recommendations

Industrial safety is everybodyôs business not just for the employers or employees but to other people who in one way or the other might be affected when industrial safety is ignored. The ill fated DANA Airline crash that occurred on the 3rd day of June 2012 affected not only the cabin crews, passengers but even innocent Nigerians resting in their houses on that fateful Sunday afternoon[451]. Although even four years after the crash there is still no final official report on the crash, it is evident that safety measures were

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[450] Eroke L., ñThe New Employees Compensation Act, *"This Day Newspaper(*30th August 2011) available at newsdiaryonline.com/chika_employee.htm(last accessed 9thOctober,2016.)

[451] ñ153 passengers dead in Dana Air crash in Lagosò-Premium. www.premiumtimesng.com/é Dana-air-crash-in...Lagos.[Accessed 9th October,2016].

ignored[452]. If safety measures were put in place may be the lives that wasted on the day would have been saved[453]. The drastic and economic impact that lack of industrial safety resulted in and the emotional trauma were inconceivable.

The following are some recommendations by the researcher that would go a long way to improving the industrial safety in Nigeria when they are put in place.

1. The safety of our work places in Nigeria should become a fundamental aspect of our constitution. Nigeria can emulate a country like India where right to safety is a constitutional right. If right to safety becomes a fundamental right and thus enforceable, employers will wake up to their obligation of ensuring the safety of their industries. Thus, the high death rate in the various industries will be greatly minimized.[454]
2. The legislatures should exercise their right under section 58 (5) of the 1999 Constitution as amended and enact the Health and Welfare Bill which was passed since 2013. This is because the absence of a contemporary legislation on industrial safety is an embarrassment to the giant of Africa. Nigeria was among the various countries that signed the ILO Convention on industrial safety in Geneva in 1981 but has not domesticated it up till today. It seems that if this bill is signed into law it will be a protective legal mechanism to workers in Nigeria.
3. The Nigerian populace should be enlightened on health and safety of our work place. Making the employers conversant with the rights as workers in industries will expose them to their rights and prevent them from taking up jobs without safety policies and if in any way their rights are breached seeking redress will not be burdensome. Also workers should be trained and retrained with requisite safety mechanisms to always meet up with their counter parts worldwide.
4. Enforceability of the rights of the employee should be taken more serious. Monitoring agents from the Federal Ministry of Labour, Trade Unions and Non-

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[452]Ogbodo D.ñFour Years After Dana Air Crash Families of Victims Demand Release of Accident Report, Compensationò(2nd June,2016)available at www.thisdaylive.com/é /four -years-after(last accessed 9th October,2016.]

[453]ñThe Real Reason Behind the Crashòthestreetjournal.org/é /the-real-reason.[Accessed 9th October, 2016].

[454]The fire incident that razed employees in a plastic factory in Ikorodu Lagos. Supra.

governmental Organizations should be up and doing in supervising and monitoring the various industries within the ambit of the law to ensure that safety measures are put in place.

5. The judiciary should become more active in employment and labour law matters. Technicalities should as much as possible be reduced to its barest minimum rather justice should not only be done but seen to be done by the common man. Delay in judicial process should be as much as practicable be avoided. Also more Industrial Courts should be established to enable employees seek redress easily.
6. Alternative Disputes Resolution mechanism (ADR) should be employed as an option in resolving industrial safety matters as it is established in the constitution.[455]ADR helps parties resolve their differences without resorting to litigation. Instead it looks at needs, interest and solutions and promotes healing.[456]
7. Unemployment should be fought with all vigor by all and sundry. Government should create more jobs with safety policies, private individuals should be encouraged to create jobs because the availability of jobs increases the right to make better choices in regards.
8. Proactive measures should be taken on safety matters in some vulnerable industries like medical industries. Personal Protective Equipment should always be available in industries like the medical sector for health workers even in the absence of any outbreak of diseases. Government should fund and encourage health research in Nigeria, train and retrain medical personnel constantly to meet with the contemporary national and global health challenges.
9. In the likelihood of life threatening diseases or imminent dangers, the lives of the workers should be insured.

6.3. Conclusion

[455] Sec. 254c(3) of the 1999 Constitution as Amended.

[456] Atilayo B. et al.,ò National Industrial Court of Nigerian and the Proposed Alternative Dispute Resolution Center: A Road Map ñArticle on ADR for National Industrial Court of Nigeria. Available at www.nicn.gov.ng/.../ARTICLE %20 ON%20 adr%20 FOR %20NIC. (Accessed 10th October, 2016).

Having elucidated employersô liability for injuries resulting from breach of industrial safety laws in Nigeria, it is believed that employees will be exposed to their right to safety at work places and where and how to seek redress in case of a breach. Employers on the other hand are urged to take up their responsibility and live up to it. Industries should no longer be injuries and death traps for the Nigerian labour force. Safety standard and policies must be put in place for the country to experience economic growth and development.

The government on the other hand should play their roles of monitoring and supervising private industries to make sure safety measures are put in place. When there is a breach, compensation should be promptly paid as provided in the *Employees Compensation Act 2010* to ameliorate the injuries sustained.

However, all hand must be on deck to ensuring that injuries and avoidable deaths at work places reduce to the barest minimum. Proactive and preventive measures should be put in place as it remains the best strategy to overcoming industrial injuries having this in mind ñSalvus populi Suprema lexò ï ñthe safety of the people is the highest lawò. Industrial safety is possible and it is everybodyôs business.

BIBLIOGRAPHY

BOOKS

Adewuni F., et al., *The State of Workers Rights in Nigeria: An examination of Banking, Oil and Gas and Telecommunication*.[Nigeria:Fried-Ebert Stiftung,2010].

Agomo C. *Nigerian Employment and Labour Relations Law and Practice*, [Lagos: Concept Publications, 2011].

Ali Linus, *Corporate Criminal Liability in Nigeria;* [Surulere Lagos: Malthouse Press 2008].

Atilola B., *Annontated Nigerian Labour Legislation*, Surulere[Lagos: Hybrid Consult 2008].

Bamber L., *et al Tolley's Health and Safety at Work Handbook*, [London: Halsbruy House, 2010].

Chianu E. *Employment Law*, 2nd Edition. [Ondo Nigeria: Bemical Publishers, 2006].

Chandler P., A- Z *of Employment Law, A Complete Reference Source for the Managers 4th Edition,*[United Kingdom: Kogan Page Limited 2003].

Cotter Barry *et al, Munkman on Employer's Liability 14th Edition*,[United Kingdom: LewisNexis 200].

Deakin S. *et al, Labour Law, 4th Edition*,[UK: Hart Publishing Ltd 2009].

Deshmukh L.M. *Industrial Safety Management Hazard Identification and Risk Control* 4th Edition, [New Delhi Tata. McGraw Hill Publishing Company Limited 2009].

Engels F., *the Condition of the Working Class in England*, [London: 1845-1969].

Chaturvedi P., *Occupational Safety Health and Environment and Sustainable Economic Development* [New Delhi: Concept Publishing Company 2007].

Elahi Nasser, *Industrial Safety Management* [India: Kalpaz Publication 2006].

Emiola A. *Nigerian Labour Law*, [Ogbomoso Nigeria, 2000].

Falana F., *Fundamental Rights Enforcement 1st Edition*, [Ojodu Lagos: Legal Text Publishing Company.2004].

Griffin S., *Company Law Fundamental Principles* 4th Edition,[London: Pearson Education 2006].

Gaymer J., *The Employer Relationship* [London: Sweet & Maxwell, 2001].

Forlin G. et al *Corporate Liability, Work Related Deaths and Criminal Prosecutions* [London: 2003].

Jain R.K. *et al, Industrial Safety, Health and Environment Management Systems* 2nd Edition, [Delhi: Khanna Publishers 2010].

Misra S.N., *Labour Industrial Laws 23rd Edition*, [India: Central Law Publications 2007].

Marx K., A *Critique of Political Economy* [London: Lawrence and Wishart, 1887 ï 1954].

Ogunniyi O., *Nigerian Labour and Employment Law*, 2nd Edition,[Ikeja ï Folio Publishers 2004].

Ogwuche A. S, *Compendium of Employment and Labour Law in Nigeria*, 1st Edition [Lagos: Maiyah Chambers, 2006].

Oliver Tim et al, *Employer's Liability cases*, [United Kingdom: Lexis New 2003].

Singh K.M. et al, *Glossary of Labour Laws, an Analysis of Legal Terms*, [India: K.C. Khurnana, 2008].

Singh U.K., *Safety, Security and Risk Management,*[New Delhi: A Pit Publishing Company 2009].

Singhania Ravi, *Employment Law in India*, 2nd Edition, [India: CCH Wotters Kluwer, 2009.

Smith I.T. et al, *Industrial Law* 8th Edition, [New York: Oxford University Press 2000.]

Stranks J., *The Health & Safety Handbook, a Practical Guide to Health and Safety Law Management Policies and Procedures*, [United Kingdom: Kogan Page Limited, 2006].

Tekle T., *Labour Law and Worker Protection in Developing Countries*, [Oxford &Geneva: 2010].

T.U.C, *Your Right at Work* 2nd Edition. [London: Kogan Page, 2004].

Uvieghara E.E, *Labour Law in Nigeria [*Ikeja: Malthouse Press Limited 2001].

Val Hughes et al, *Tolley's Guide to Employee Rehabilitation*, [United Kingdom: Lexis Mexis 2004.]

Vickers Lucy, *Freedom of Speech and Employment*, [New York: Oxford University Press, 2006.]

Welman M., *Corporate Manslaughter and Corporate Homicide, A Managers Guide to Legal Compliance*, 2nd Edition, [London: Tottel Publishers, 2008.]

Wilson W. *Criminal Law Doctrine and Theory*, 2nd Edition, [United Kingdom: Pearson Education, 2003]

JOURNALS

Atilola B., óA critique of the Factories Act in the Light of Changing Work Patterns, Occupational Safety and Health Practiceô *Nigerian Journal of Labour Law and Industrial Hybrid Consult* Vol 4 No 1(2010)

Morris G. S., óFundamental Rights: Exclusion by Agreementô *British Industrial Law Journal*(2001).

Reasons C.: óCrime Against the Environmentô Some Theoretical and Practical Concerns *Criminal Law Quarterly Journal* (1991) Vol 34.

Rotimi W., óOccupational Safety and Health Protection of the National Labour Force: The Constitutional and Legal Perspectiveô *Nigerian Journal of Labour Law Industrial Relations* (2010).

Shish J. M, óThe Legal Framework for Community Compensation in Nigeria *Nasarrawa State University Law Journal* (2004) Vol 1.

Stessen G, óCorporate Criminal Liability. A Comparative Perspectiveô *International and Corporate Law Quarterly Journal* ICK (1994).

INTERNET MATERIALS

Audu O.,òBlast at Radio Station Kills Manyò *Premium Times*,(27 June,2015. Available at www.premiumtimesng.com/news/topnew/182171(Accessed 15/06/15).

Bamidels A., ñOverview of Legal Frame Work of Nigeriaôs Industrial Relations. 9th August 2010 Available at http://www.Nigeriabestforum.com.

Eroke, L. óThe New Employees Compensation Actô, *This Day Newspaper* (30 Aug. 2011) Available at News Diary on line.com chikaemployee.html accessed 1st May, 2012.

Fajana O. Safety at Work: issues and Challenges cited in Ogunmosunle S.ò Purging Nigeria of Apathy towards Safetyò in

http://www.pmnewsNigeria.com/2012/03/13-purging-nigeria-of-of-apathy-towardssafety-practics-sol(Accessed 15 June2015).

Ogbeche D.ñHow Two Sisters Died in Enugu Amusement Park, 5 injuredòDaily Post.ng/é /how-two-sisters-died in Enugu.July,16,2016.(Accessed 8th October,2016).

Ogbodo D. ñFour Years After Dana Air Crash Families of Victims Demand Release of Accident Report, Compensationò(2nd June,2016)available at www.thisdaylive.com/é /four -years-after (last accessed 9th October,2016).

Oyesola, B. ó Safety at Work, Nigerian Workers, the Endangered Spaceô Daily Sun Newspapers, Monday Jan.3, 2011. http://www.Nigeriabestforum.com/blog/p.728/9 accessed 4/05/2015.

Zulu D -ò Protecting Workers from Ebola Outbreakò *Vanguard*, (Lagos ,9 September 2014).pg45

Journalist face Danger, Death on Line of Duty (27th April 2012) Available at http:www.peoples.dailyonline.com/news/national news/35527.

www.http://ebookbrowser.com/corporatecrimes and liability under - Nigerian laws accessed 11/08/2013 http://www Niger Delta heart beat.wix.com/Niger-delta-heart-beat/apps/blog/Nigeria-labour-safety-health-welfare-bill-passed.(Accessed 16/06/15)

www.corporate accountability.org, accessed 11/08/2013

ode.www.eionet/europa.eu/gemet, accessed 18/08/2011

www.premiumtimesng.com/é Dana-air-crash-in...Lagos.[Accessed 9th October,2016].

http://www.scrbd.com/doc.accessed 18/09/2016.

The Real Reason Behind the Crashòthestreetjournal.org/é /the-real-reason.[Accessed 9th October, 2016].

www.unep.org/.../environmental Assessment of Ogoni Land Report/../15/04/2012