LIABILITY FOR EXERCISING THE RIGHT TO STRIKE IN NIGERIA: SOME REFLECTIONS

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1. Introduction
The purpose of this article is to examine the liability that workers and trade unions are subjected to for exercising the right to strike in Nigeria. The exercise of the right to strike may have legal consequences for each individual employee engaged in the action. It may also have legal consequences for a trade union to which those individuals belong. In some cases the same legal consequences may apply both to the employees and to the trade union and its officials.

Liability for strikes can be civil or criminal. The first part of this article analyses civil liability for exercising the right to strike, which includes dismissal for breach of contract of employment and loss of wages and other benefits of office. This is followed by a discussion of liability for torts, such as inducing breach of contract and civil conspiracy. The second part of the article examines criminal liability for strikes, which include conspiracy, intimidation, and fraud, for example. In addition, the article also examines the penal sanctions provided by labour statutes against strikers.

The consequences which the law attaches to strike actions are material in assessing the status and scope of the right to strike. It shall be argued that the imposition of liabilities for exercising the right to strike, especially the dismissal of strikers and the

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...physical sanctions of fines of the principles surrounding demonstrates the lack of and the need for opportunity to pronounce reliance is placed more on basic principles that prime Nigerian court to refuse to be reasonable to expect deciding them, to treat UK. This is understandable given the two countries.

2. Civil Liability for Breach of Contract
This section examines of contract of employment, striking workers and the exercise of the right to strike.

2.1 Dismissal for Breach of Contract
The position of an employee depends upon the effect of breach of contract. In Nigeria that a strike action makes the employee liable for loss of wages and other benefits because by going on strike, they breach contractual obligations. Simultaneously, the courts have held that such actions serve the employer faithful serve the employer faithful contract, thereby causing harm to the employer of the fact of whether the

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54 Forster outlined three legal cases of a strike action in relation to an order on the nature of notice of strike, violation of contract as soon as the strike begins.

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the liability that exercising the right to strike may have engaged in the same legal and to the trade criminal. The first part exercising the right to each of contract of benefits of office. This is such as inducing the second part of the strikes which include sample. In addition, the provided by labour achieves to strike actions of the right to strike, abilities for exercising of strikers and the

physical sanctions of fines and imprisonment, is a grave violation of the principles surrounding the right to strike and further demonstrates the lack of adequate protection for the right to strike in Nigeria and the need for reform measures to be adopted.

It must be noted that the Nigerian courts have not had the opportunity to pronounce on many cases in this area, and so reliance is placed more on English cases as formulations of the basic principles that prima facie apply. While it is open to a Nigerian court to refuse to follow UK law in this domain, it would be reasonable to expect lawyers pleading cases, and courts deciding them, to treat UK principles as the point of departure. This is understandable given the historical relationship between the two countries.

2. Civil Liability for Exercising the Right to Strike

This section examines the dismissal of strikers for breach of contract of employment, the loss of wages and other benefits of striking workers and the use of the labour injunction to frustrate the exercise of the right to strike.

2.1 Dismissal for Breach of a Contract of Employment

The position of an individual who participates in a strike depends upon the effect of the strike action on his contract of employment. It is a fundamental principle of common law in Nigeria that a strike action amounts to a breach of contract which makes the employee liable to dismissal by the employer. This is because by going on strike workers thereby refuse to perform their contractual obligations. Since strike involves refusal to work the classical view is that such action amounts to a breach of the duty to serve the employer faithfully within the requirements of the contract, thereby causing harm to his business. This is irrespective of the fact of whether the employee gives notice or not to the

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534 Forster outlined three legal consequences that may arise, at common law, out of a strike action in relation to an individual contract of employment, depending on the nature of notice of strike, viz: (1) It may cause a termination of the contract as soon as the strike begins where notice of strike is expressed clearly
employer. In *Secretary of State v. ASLEF (No 2)*, for example, the Court of Appeal held that a work-to-rule was a breach of an implied term to serve the employer faithfully. Furthermore, in *Miles v. Wakefield DC* Lord Templeman said:

"Any form of industrial action by a worker is a breach of contract which entitled the employer at common law to dismiss the worker, because no employer is contractually bound to retain a worker who is intentionally causing harm to the employer's business."

This common law position is not without difficulties. This is because, in practice, the employer usually regards the contract as still subsisting in spite of the breach. Among other reasons, it has been suggested that the employer does not want to lose the services of experienced workers, successors of whom he will have to train. Similarly, the workers do not want to throw away their jobs with gratuities and pension rights and other privileges which workers have accumulated over a period of years. In short, it is the intention of both parties to keep the contract alive in spite of the rupture in the industrial relations, which they both expect to be temporary.

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Lord Denning's view that the contract of employment should be deemed suspended for the period of the strike was canvassed for statutory recognition before the Donovan Commission. The proposal did not, however, find favour with the Commission. 

Thus, the classical common law position remains that, whenever a strike occurs, whether notice for it is given or not, it amounts to breach of the worker's contract of employment since he will be disregarding his essential obligation to the employer. This point was reiterated in Simmons v. Hoover where the court held that, where there was a strike, whether preceded by proper notice or not, the participation by an employee in the strike would constitute a repudiation of his contract of employment entitling his employer to dismiss him without notice. Phillips J said:

"It is idle to contend that in most cases men are not dismissed when on strike; that they expect not to be dismissed; that the employers do not expect to dismiss them, and that both sides hope and expect one day to return to work. Sometimes, however, dismissals do take place and they are lawful." 

The court concluded that going on strike was evidence of a "a settled, confirmed and continued intention on the part of the employee not to do any of the work which under his contract he

541 Ibid.


545 Ibid, p.785.
had engaged to do; which was the whole purpose of the contract."^546

Nigerian law maintains the orthodox common law rule that a strike by an individual worker amounts to a fundamental breach of contract of employment leading to dismissal. The first reported case on the point appears to be the Supreme Court decision in Anene v. J. Allen & Co. Ltd.^547 In that case, the appellant along with other employees went on strike from 5 July to 16 July 1960. After the intervention of the Federal Ministry of Labour it was agreed that the striking workers should apply for re-engagement. The appellant’s application was turned down and he sued, *inter alia*, for salary in lieu of notice. The appellant’s counsel argued that the employee’s service contract was terminated on 28 July 1960 when the company wrote to reject the application for re-engagement. But this was rejected in favour of the company’s contention that the application for re-engagement meant that when the workers went on strike the contract was repudiated and, having withdrawn his services, he could not claim a salary in lieu of notice. On the effect of strike on the contract of employment, Brett, JSC said:

“Prima facie, a striker intends to return to work once the objects of the strike have been attained and although this may involve a fresh contract of service an intention

[^546]: Ibid. Similarly, in Cummings v. Charles Connell & Co. (Shipbuilders) Ltd (1968) Session cases 305, the Scottish Court of Session held that in the absence of an express implied term of the contract to the contrary, an employee may dismiss an employee who refuses to work because he is on strike. However, the present position in the UK is that, even though there is breach of the contract of employment, unfair dismissal legislation nevertheless protects the striker over a wide spectrum of situations. 238A of the Trade Unions and Labour Relations (Consolidation) Act 1992 provides that it is automatically unfair to dismiss an employee for taking part in a lawful strike. Section 238A stipulates that industrial action is “protected” if the employee is induced to take part in industrial action by an act or series of acts that, by virtue of section 219, is not actionable in tort. See generally, S. Deakin and G. Morris, Labour Law (London: Butterworths, 2001), pp. 974-990; C. Barrow, Industrial Relations Law (London: Cavendish Publishing Limited, 2002), pp. 294-297.

[^547]: (1975) 5 UILR (Part IV), p. 404. The decision was in 1965 but reported in 1975.

[^548]: Ibid.


[^551]: The Supreme Court acceded to the agreement the Ministry of Labour was obvious that the appellant had relationship by his own action. The employ in the mediated agreement both parties took for granted that Chianu supports this view. See E. Bemicov Publishers Ltd, 2004), p.
The purpose of the common law rule that fundamental breach. The first reported Court decision in the appellant along July to 16 July 1960. of Labour it was for re-engagement. and he sued. inter's counsel argued terminated on 28 July application for re- the company's meant that when mediated and, having a salary in lieu of act of employment, return to work once attained and although service an intention to repudiate the existing contract is not necessarily to be presumed; on the other hand, the whole of the circumstances, including the duration of the strike, may be such as to warrant the employer in treating the striker as having manifested an intention to repudiate. It is therefore impossible to lay down any rule of universal application, and each case must depend on its own facts.  

Akpan has argued, on the basis of this decision, that the Supreme Court adopted the suspension theory propounded by Lord Denning MR in Morgan v. Fry. It is submitted, however, that there is nothing either from the ratio decidendi or from an obiter in the judgment to suggest that the contract was suspended. On the contrary, the Supreme Court held that, by proceeding on strike, the appellant had repudiated the contract of employment; that is why the case failed. The actual decision restated the common law repudiation position.

However, Justice Brett’s dictum invites several comments. First, Justice Brett says that the presumption of abandoning duty may be rebutted by an employee doing something to show an intention no longer to be bound by the employment contract. His lordship gives no indication of what this would be. May be plant sabotage or may be failure to resume after the strike has been lawfully called off, but definitely not moonlighting since the

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548 Ibid.
550 [1968] 3 ALL ER 452 at 458.
551 The Supreme Court acceded to the company’s argument that, since the agreement the Ministry of Labour mediated used the term ‘re-employment’, it was obvious that the appellant had admitted that he had terminated the relationship by his own action. The court emphasised the use of the word ‘re-employ’ in the mediated agreement, holding that it manifested an intention that both parties took for granted that the pre-strike employment had come to an end. Chianu supports this view. See E. Chianu, Employment Law (Ondo State: Bemicov Publishers Ltd, 2004), p. 294.
common law recognises an employee’s right to moonlight as he is not entitled to his pay during strike.\footnote{552}{E. Chianu, Employment Law (Nigeria: Bemicov Publishers Ltd, 2004), p. 294.}

Secondly, Justice Brett says that resumption of work after strike “may involve a fresh contract of service” even though “an intention to repudiate the existing contract is not necessarily to be presumed.” This is contradictory. If the existing contract is presumed extant there is no need for a fresh contract of service.\footnote{553}{Ibid.}

Furthermore, in \textit{Federated Motor Industries (Division of UAC Ltd) v. Automobile Boatyard, Transport Equipment and Allied Workers Union}\footnote{554}{[1978-79] NICLR 152-169. See also Grizi (Nigeria) Ltd v. Grizi (Nigeria) Ltd Group of Companies Workers’ Union (1978-1978) NICLR 204.} the respondent union embarked on a strike against the plaintiff’s refusal to remove the works manager who they claimed was working against the workers’ interest. The demand was, however, later withdrawn, but management subsequently dismissed 403 workers for embarking on the strike. The National Industrial Court held that management was not bound to re-engage any or all the workers as the common law entitles the employer to dismiss the employee who refuses to perform his contractual obligation. Similarly, in \textit{Management of Gulf Oil Co. of Nigeria Ltd v. NUPENG}\footnote{555}{(1987) NICLR 134.} four union officials were dismissed for participating in a strike. The National Industrial Court upheld their dismissal for breach of contract of employment.

These decisions clearly demonstrate that employees taking part in a strike are liable to be dismissed for a fundamental breach of the contract of employment. But should strike by employees be taken as a breach of the contract of employment? It is submitted that it is fundamentally in breach of the principles surrounding the right to strike to regard strike action by employees as a breach of the contract of employment leading to their dismissal. Workers do not see strike as a way of leaving their employment. A strike is merely used as a weapon to ensure that the demands of workers are met by the employer. In truth, a strike is intended to exert greater and more effective pressure upon an employer; strikers...
want to continue with the existing but improved contracts of employment. 556

The dismissal of workers because of strike is a serious violation of international law. 557 The ILO has ruled that it is inconsistent with the principles of the right to strike to dismiss workers for exercising this right. 558 The Committee on Freedom of Association has reiterated that, when workers are dismissed for having exercised the right to strike, the conclusion is that they have been punished for their trade union activities and discriminated against. 559 As the Committee further noted:

"Respect for the principles of freedom of association requires that workers should not be liable or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike. Logically, it should also be irrelevant that the dismissal takes place in advance of a strike, if the purpose of the dismissal is to impede or to penalize the exercise of the right to strike." 560

It is therefore submitted that for the duration of a strike there should be no breach of contract on the part of the employee to warrant his dismissal. Thus, during a strike action the main obligations of the contract which involves the willingness to work on the part of the employee and payment of wages on the part of the employer


558Ibid., paras. 661 and 663.

559Ibid, paras. 661 and 663. It is not only dismissals that concern the ILO, but sudden transfers, downgrading, blacklisting and compulsory retirements are considered as forms of punishment which the Committee feels is compatible with freedom of association. See Freedom of Association and Collective Bargaining 1985 Digest, para. 40.
should be suspended. This will protect the right to strike. In fact, the predicament of the worker in Nigeria is aptly summarised by Kahn-Freund:

"Does a strike or a lock out put an end to the [workers’] contracts of [employment]? Does it suspend them? Do those taking part in a strike break their contracts so that the employer may dismiss them without notice? Or does he, by doing so, in his turn break the contract? And whether he does or not, can he be liable ... for dismissal if he has dismissed a worker who has gone on strike or been locked? At this point the difference between “right” and a “mere freedom” to strike becomes decisive. If – as in France and Italy – the workers have a “right” to strike then they cannot, by exercising it, break their contracts. Moreover, if the contract was terminated by a strike or if the mere fact that there was a strike allowed the employer to terminate it, the right to strike would be frustrated, because the workers could exercise it only at the risk of sacrificing their jobs. Hence – and this conclusion was drawn in Italy as well as in France – the contract of employment is only suspended by the strike, and after its end, the employee is entitled to re-instatement with full seniority."

The suspension theory is strongly recommended as it seems commonly accepted and reasonable.

Chianu has argued that to hinder employers from dismissing striking employees would encourage industrial indiscipline and make strikes all too powerful an instrument of economic coercion. It is submitted, with respect, that this view

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561 However, where employees commit dismissable offences while on strike they can be dismissed.


565 As Bendix noted: “It is arguable that the principle is that the right to strike is a mere freedom, not a right, so that the mere fact that there was a strike allowed the employer to terminate it, the right to strike would be frustrated, because the workers could exercise it only at the risk of sacrificing their jobs. Hence – and this conclusion was drawn in Italy as well as in France – the contract of employment is only suspended by the strike, and after its end, the employee is entitled to re-instatement with full seniority.”
right to strike. In fact, the right is summarised by: *Do those contracts so that the face? Or does he, by And whether he does if he has dismissed a blocked? a “mere freedom” ce and Italy – the struck, by exercising it, was terminated by a strike allowed the would be frustrated. The risk of sacrificing own in Italy as well by suspended by the ed to re- installment ended as it seems employers from courage industrial an instrument of sect. that this view while on strike they the Law (London: four norms which Concerning the p. 544-457. See also “(2004-2005) 26 Contracts” (1997) 2

ARUJA JOURNAL OF PUBLIC AND INTERNATIONAL LAW VOL. 1, NO. 1, AUGUST 2006

is misconceived as it does not take into account the essence of the right to strike, which is that it is a last resort by workers to improve their employment conditions. Moreover, dismissing workers for strike ignores the reality that strikes are an accepted incident of the continuing collective bargaining relationship between employer and employee. Striking is simply a temporary suspension of the employment relationship; dismissal, by contrast, is its permanent termination. Dismissal is therefore a disproportionate response to striking and wrong for that reason.⁵⁶⁵ As has been noted:

“The developments in the sphere of employment law now make it incongruous to speak of the repudiation of the employment contract by the employees on account of a strike. The purpose of the economic strike is not to repudiate or cancel the contract but to induce the employer to vary one or more of its terms such as improved wages. It is the employer who, by ordering a dismissal in the face of collective industrial action repudiates the employment contract in reality.”⁵⁶⁶

⁵⁶⁵ As Bendix noted: “It is argued that the employer has as much right to withhold the opportunity to work as the employee to withhold his labour. This is so, but the principle is that the withholding should be of a temporary and not a permanent nature. The corollary of the right to strike is, therefore, the right to lock-out and not the right to dismissal. Both sides suffer losses from a strike or lock-out, but, in the case of a dismissal, it is the employee who suffers the major loss.” See S. Bendix, Industrial Relations in South Africa (South Africa: Juta, 1989), p. 215. See generally: M. S. M. Brussey, “The Dismissal of Strikers” (1990) 11:2 Industrial Law Journal, p. 213; R. Krider, “Dismissal and Industrial Action” (1981) 131 New Law Journal, p. 151; J.F. Myburgh, “The Protection of Strikers from Dismissal” in Benjamin (ed.), Strikes, Lock-outs and Arbitration in South African Law(South Africa: Juta), pp. 34-35.

Indeed, a right to strike does not exist unless it is possible to withdraw one’s labour without the risk of dismissal. In other jurisdictions, for example, protection is given to the individual worker against dismissal for participation in a lawful strike. In the USA, for example, this protection is in the form of a judicial presumption that striking is not a rescission of the employment relation. In addition, under section 7 of the National Labor Relations Act 1935 employers have the right to participate in “concerted activities” for the purposes of collective bargaining. Indeed, in the USA, while workers are not paid during strikes and while the employer is free to recruit replacements for those on strike, the workers can legitimately expect not to be disciplined for participating in a strike. Furthermore, in Canada participation in a lawful strike does not thereby render a worker liable to discharge for misconduct. A similar position is provided for in


568 In addition to France and Italy already referred to by Kahn-Freund above.


the laws of South Africa, for example. Thus, recourse is given to the individual worker against dismissal for participation in a lawful strike. In the USA, for example, this protection is in the form of a judicial presumption that striking is not a rescission of the employment relation. In addition, under section 7 of the National Labor Relations Act 1935 employers have the right to participate in “concerted activities” for the purposes of collective bargaining. Indeed, in the USA, while workers are not paid during strikes and while the employer is free to recruit replacements for those on strike, the workers can legitimately expect not to be disciplined for participating in a strike. Furthermore, in Canada participation in a lawful strike does not thereby render a worker liable to discharge for misconduct. A similar position is provided for in

2.2 Loss of Wages

In addition to employment workers exercising the right to strike that there is no basis for dismissal of the employer? Section 42(1) of the Western nations have chosen this provision has referred to as the “no-work, no-pay” employee to be willing to perform work and ready to serve the employer. In other words, the employee loses his contract has ended but the employee is still not paid as he failed to fulfil the conditions of the employment contract.

572 See section 67(2) of the Labour Act 2003, section 68(2) of the Labour Act 2003, section 70.


574 Section 42(1) Trade Disputes Act 1974.


576 “Deductions from Pay for Indus
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in R. Lewis (ed.), Labour Law

243-271; J. Bowes, "Industrial

ment" (1986) 136 New Law

Industrial Action on the Status

K. W. Wedderburn (eds.).


the laws of South Africa, Malawi, Kenya, and Ghana, for example. Thus, recognising that the employment contract is suspended during a strike would protect the right to strike in Nigeria and would also be consistent with how other African and Western nations have chosen to protect the right to strike.

2.2 Loss of Wages and Other Benefits

In addition to dismissal for breach of contract of employment workers may lose wages and other benefits for exercising the right to strike. Does participation in a strike mean that there is no basis for claiming remuneration from the employer? Section 42(1) of the Trade Disputes Act 2004 provides that where any worker takes part in a strike he shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of reckoning the period of continuous employment. Furthermore, all rights that depend on the continuity of employment are prejudicially affected.

This provision has two limbs. The first limb is usually referred to as the “no-work, no-pay” rule. Common law requires an employee to be willing and ready to serve as a condition precedent to receiving wages. A striking employee cannot claim to be willing and ready to serve and at the same time stay away from work. In other words, salaries and wages are tied to productivity. Thus, the employee loses his right to wages, not because the contract has ended but because, in failing to earn them, he has failed to fulfil the condition precedent to their becoming payable.

572 See section 67(2) of the Labour Relations Act 1995.
573 See section 48 of the Labour Relations Act 1996.
574 See section 15 Trade Disputes Act 2003.
575 Labour Act 2003, section 70.
576 Section 42(1) Trade Disputes Act 1990.
One difficulty here is that, while at common law, a strike signifies complete cessation of work, under the Trade Disputes Act 2004, a strike includes “deliberately working at less than usual speed or with less than usual efficiency,” that is a go-slow or work-to-rule. What this means is that an employee who goes to work and in concert with others performs his duties at less than the usual speed or efficiency would not be entitled to his wages at the end of the strike. In France, for example, Article 6 of the law on strikes provides that any stoppage of work entails the loss of a whole working day’s salary even if the stoppage was only for one hour. However, it is submitted that wages should not be withheld under such circumstances as this will not make for healthy industrial relations practice. In Management of United Bank for Africa Ltd v. National Union of Banks, Insurance and Financial Institutions Employees, for example, the Bank’s employees went on strike as a result of the Bank’s refusal to pay a productivity bonus for 1981. While the strike was on the Bank paid the employees their wages as usual, but subsequently sought to recover it from the employees. In their claim the Bank sought to obtain an order of the court to deduct the money paid to the employees arguing that they were not entitled to it. It was held that the Bank was estopped when conscious of its rights under the law it voluntarily made payments to the employees for the period of the strike. A second ground for the judgment was that an order permitting deduction would not promote good industrial relations. The Court observed as follows:

“From all the evidence before the Court, it is clear that the Appellants voluntarily made to the workers payments for the periods of the strikes (sic). They must also have been fully cognisant of their rights under the law, which is therefore acce for theResp industrial rel money from the Appellants from claiming a

Following this case, the Disputes Act does not provide for the recovery of wages of workers. Therefore, the employer would not invol employee are not illegal. One. Payment of wages is as a mistake of law. The under a mistake of fact is irrecoverable.

The second limb depends on continuity means that the strike is a logical deduction from the justified in punishing work benefits, such as promotion dependent on continuity of better view should be that permanently sever the up of the bargaining provisions, or the denial of benefits that each time a worker service and that a fresh contrac

580 (1982/83) NICLR 211.
common law, a strike the Trade Disputes at less than usual that is a go-slow or employee who goes to duties at less than the his wages at the article 6 of the law on entails the loss of a was only for one was not be will not make for Management of United Banks, Insurance and example, the Bank's Bank's refusal to pay a was on the Bank subsequently sought the Bank sought to money paid to the to it. It was held that rights under the law for the period of was that an order industrial relations. Court, it is clear that to the workers worker (sic). They must their rights under the

law, which is patently unambiguous. The Court therefore accepts the submission of the learned counsel for the Respondents that it might not promote good industrial relations if the Court orders deductions of the money from the workers' wages and salaries and that the Appellants by their conduct are estopped in law from claiming such deductions.\

Following this case, Adeogun has suggested that the Trade Disputes Act does not prohibit payment of wages by the employer to workers. Therefore, any voluntary payment of wages by the employer would not involve illegality and such wages paid by the employer are not illegal. This view appears to be the correct one. Payment of wages to a striking employee would be classified as a mistake of law. The general rule is that, while money paid under a mistake of fact is recoverable, money paid under a mistake of law is irrecoverable.

The second limb of section 42(1) stipulates that all rights dependent on continuity of employment shall be harmed. This means that the strike ruptures the continuity of employment. A logical deduction from this view is that the employer would be justified in punishing workers by depriving them of employment benefits, such as promotion, pension, and other schemes that are dependent on continuity of service. However, it is submitted that a better view should be that, as the main purpose of a strike is not to permanently sever the employment relationship but the stepping up of the bargaining pressure by its suspension, a strike should not warrant denial of benefits due to lack of continuity. Indeed, to hold that each time a worker goes on strike he forfeits all his previous service and that a fresh count of continuous service has to begin

581 Ibid. at p. 247.
583 See William Whiteley Ltd v. R. [1908-10] ALL ER 639, 641. In that case Walton J held that “Money paid voluntarily, that is to say, without compulsion or extortion or undue influence, and …without fraud on the part of the person to whom it is paid, and with knowledge of all the facts, though paid without any consideration, or in discharge of a claim not due, or a claim which might have been successfully resisted, cannot be recovered back.” Ibid.
seems wholly indefensible. The position thus taken by Nigerian law greatly impairs the free exercise of the right to strike.584

3. Civil Liability: Liability in Torts
   This section discusses the liability of trade unions and their officials for various torts, such as inducing breach of contract, intimidation and civil conspiracy in exercising the right to strike.

3.1 Inducing Breach of Contract
   Strike action invariably involves the trade union calling on its members to breach their contracts of employment with the employer in dispute. It is an actionable wrong amounting to the tort of inducing breach of contract for a third party to intentionally and knowingly and without justification to induce or procure a servant to breach his contract of employment to the damage of his employer.585 This principle was applied in the Nigerian case of Randle v. Nottidge.586 The plaintiff, the proprietor of a firm of printers, employed one Barham under a written contract which stipulated that during his employment Barham would not do any work for reward except for his employer. While the contract was in force the defendant took Barham to work for him for reward. The plaintiff sued the defendant for procuring his worker to commit a breach of his contract of employment. The Supreme Court of Nigeria held that, knowing of the existence of a contract of service between the plaintiff and the employee, the defendant was liable for inducing the breach of contract.

   For an action to succeed for the tort of inducing breach of contract the following three conditions must be satisfied: (1) Knowledge and intention to break the contract; (2) Inducement to break the contract; (3) Actual breach of the contract and damage. These conditions are considered in the following sections.

584 It must be noted that, in addition to loss of wages and other benefits, the employer could also recover damages from the worker for strike action. See National Coal Board v. Gally (1958) 1 ALL ER 91.
585 See Lumley v. Gye (1853) ALL ER 208. See also South Wales Miners’ Federation v. Glamorgan Coal Co. [1905] AC 239.
586 [1956] 1 FSC 96.
taken by Nigerian unions and their right to strike. But it is not necessary for the plaintiff to prove that the defendant knew of the exact terms of the contract. The relevant question here seems to be whether the defendants have sufficient knowledge of the terms to know that they were inducing a breach of contract. Thus it is sufficient if the defendant has some knowledge of the terms to appreciate the fact that he is inducing a breach of contract. Hence, even constructive knowledge would suffice.

In *Emerald Construction Co. Ltd v Lowthian* Lord Denning said:

“If the officers of the trade union knowing of the contract deliberately sought to procure a breach of it, they would do wrong; see *Lumley v. Gye* (1853) 2 E. & B. 216. Even if they did not know of the actual terms of the contract, but had the means of knowing—which they deliberately disregarded—that would be enough. Like the man who turns a blind eye. So here if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. It is unlawful for a third person to procure a breach of contract knowingly or recklessly, indifferent whether it is a breach or not.”

This case also shows that mere knowledge of the existence of the contract without more will not suffice. The knowledge must be coupled with an intention to bring about the breach of contract. Such intention can be proved by establishing the desire to bring about the end of the contract. Thus, it will not suffice to show that the defendants have in fact procured a breach of contract. It must be shown that they must have done so knowingly and

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584Stratford v. Lindley (1965) AC 269, 332, per Lord Pearce.
586Ibid.
587Ibid. pp. 700-1.
However, the element of intent needed to constitute the tort would have been established where it is proved that the defendants intended the party procured or induced to bring the contract to an end by breach of it, if there were no way of bringing it to an end lawfully.

3.1.2 Inducement to Break the Contract

The second requirement is that the plaintiff must prove that the action of the defendant constituted an undue interference which induced the other contracting party to act in breach of the contract between them. The requirement of inducement will seem to be satisfied if a person persuades, instructs, directs, threatens or orders one party to the contract to break his contract of employment. In *Thomson v. Deakin* a mere call for help was held not to be sufficient inducement. But in *Lumley v. Gye* the offer of a higher pay was the inducement or interference which procured the breach. Furthermore, it is important to distinguish persuasion from the communication of mere information or advice. In *Thomson v. Deakin* Lord Evershed MR said: "A mere statement of, or drawing of the attention of the party addressed to, the state of the facts as they are is not inducement but only transmission of information; and before it becomes an inducement giving rise to liability it must contain some element of pressure, persuasion or procurement."

However, where, for example, trade union officials decide to call a strike and prevail on the union members to embark on strike in breach of their contract of employment, this would seem a clear case of inducing union officials liable. In *Glamorgan Coal Co.* it is very difficult to find such cases from *Thomson v. Deakin* where the inducement or interference was more than mere advice. Lord Evershed MR said: "That there are cases where there is no inducement, but mere advice that a strike is necessary, is evident from the cases cited*. In that case, in *Bores v. Lindley* the union stopped work on the result of which union members stopped work.

3.1.3 Actual Breach of Contract

The last requirement of the plaintiff is that the plaintiff has suffered damage as a result of the breach of contract. It seems to be firmly established that he has to prove not only that the inducement to break the contract but that he has suffered damage as a result of the breach of contract.

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591 See White v. Riley (1921) 1 Ch. 1. In this case, the union had asked the employer to terminate the plaintiff's employment by giving sufficient notice or salary in lieu, but the employer later dismissed the plaintiff without notice. An action by the employee against the union officials failed since it was held that the circumstances indicated that it had been the intention of the union that the plaintiff should be dismissed with notice, and thus there had been no intention to induce any breach of contract.


593 [1952] Ch 646.

594 (1853) ALL ER 208.

595 [1952] Ch 646.

596 Ibid., p. 686.
of intent needed to establish where it is proved or induced to bring if there were no way of

a plaintiff must prove that an undue interference to act in breach of the of inducement will seem acts, directs, threatens or break his contract of a mere call for help was in Lumley v. Gye \(^{594}\) the act or interference which important to distinguish of mere information or pressed MR said: “A mere of the party addressed to, not inducement but only becomes an inducement some element of pressure,

union officials decide members to embark on a clear case of inducing a breach of contract which will make such union officials liable. In *South Wales Miners’ Federation v. Glamorgan Coal Co.* \(^{597}\) resolutions by the union officials, as a result of which union members stopped work, were held to be more than mere advice. Lord Lindley said:

“That there are cases in which it is not actionable to exhort a person to break a contract may be admitted and it is very difficult to draw a sharp line separating all such cases from others. But the so-called advice here was much more than counsel; it was accompanied by orders to stop ‘work’, which could not be disobeyed with impunity.” \(^{598}\)

In that case, in compliance with a number of resolutions taken by a committee of the defendant’s union on several dates, employees of the plaintiff’s company who were members of the union stopped work on those days in breach of their contract of service. In an action for inducing breach of contract, it was held that “resolutions by union officials such as ‘men must be idle Thursday next’ or ‘stop work Wednesday’ as a result of which the union members stopped work were more than mere advice.” \(^{599}\)

3.1.3 Actual Breach of the Contract

The last requirement for the tort of inducing breach of contract is that the plaintiff must show actual breach and also that he has suffered damage thereby. The rule of law that actual breach of contract must occur for the tort of inducement to be committed seems to be firmly established. \(^{600}\) But the plaintiff also has to prove not only that the inducement or interference caused a breach of contract but that he has suffered damage as a result. Thus an

\(^{597}\) [1905] AC 239.
\(^{598}\) Ibid, p. 254.
\(^{599}\) Similar decisions were reached in the cases of Read v. The Friendly Society of Operative Stone Masons [1902] 2KB 88 and Temperton v Russell [1893] 1 QB 715. See also Allen v. Flood [1898] AC 1
action for inducing breach of contract can only succeed when
damage to the plaintiff is shown.601

3.2 The Tort of Intimidation

Intimidation occurs where damage is caused to the plaintiff
by threats of unlawful acts. Intimidation is defined as a conduct
which causes in the mind of a person a reasonable apprehension
of injury to him or to any member of his family or to any of his
dependants or violence or damage to any person or property. In
Stratford v. Lindley602 Lord Denning MR in explaining the
elements of the tort of intimidation, said:

"... there must be a coercive threat to use unlawful
means, so as to compel a person into doing something
that he is unwilling to do, or not doing something
that he wishes to do; and the party so threatened must
comply with the demand rather than risk the threat
being carried into execution. In such case the party
damnified by the compliance can sue for damages for
intimidation."603

It is what the defendants have threatened to do that
determines whether the tort of intimidation has been committed or
not. If what the defendant has threatened to do is unlawful he
would be liable to the party who has suffered damage as a result
of the person threatened complying with that threat. If what the
defendant has threatened to do is what he has a right to do, that is,
when no unlawful means is involved, he would not have
committed that tort of intimidation even though a party has
suffered damage as a result of the person threatened complying
with the threat.604

Thus, where trade union officials threaten an employer
with a strike if he fails to dismiss a worker in his employment this
will amount to intimidation since it shows an unlawful means.

601 See Bents Brewery Co. Ltd v. Hogan [1945] 2 ALL ER 570.
603 Ibid, p. 286.
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ows an unlawful means.

This was what happened in Rookes v. Barnard. In that case the plaintiff was employed by the British Overseas Airways Corporation (BOAC) as a draughtsman at its London airport. The plaintiff and all draughtsmen at BOAC belonged to the Association of Engineering and Ship-Building (AESB) Union which maintained a one hundred per cent closed shop. There was a "no-strike" clause in the contract agreement between the Union and BOAC. The plaintiff became dissatisfied with the Union and resigned from it. The airport branch of the union then passed a resolution that, unless BOAC removed the plaintiff if he continued to refuse to re-join the union, the union would call out its members on strike. Rather than risk the strike BOAC terminated the employment of the plaintiff by giving him proper notice. The plaintiff brought an action against the union officials in that they had used unlawful means to threaten his employer as a result of which he suffered damage. The unlawful means here was the threat of the officials, who were also employees of BOAC, to break their contract of employment. The House of Lords held the defendants liable.

3.3 Civil Conspiracy
Trade unions and their officials may also be liable in tort for civil conspiracy. Conspiracy is both a crime and a tort. A criminal conspiracy is constituted by the mere agreement of two or more persons to effect any unlawful purpose, even if nothing is done in pursuance of it. The tort of civil conspiracy, however, is constituted only if the conspirators have done some act in pursuance of their agreement resulting in damage to the plaintiff.

The clear difference between the two is that in criminal conspiracy the crime is complete in the agreement, while in civil conspiracy the act agreed upon is carried into effect to the damage

605[1964] 1 ALL ER 367.
607 Majekodunmi v. R [1952] 14 WACA 64.
of the plaintiff. Thus, in order to make out his case for civil conspiracy, the plaintiff has to establish three things: (i) agreement between the defendants; (ii) to carry out an unlawful purpose; and (iii) resulting in damage to the plaintiff.

The tort of conspiracy to injure was established in Quinn v. Leathem.\textsuperscript{608} In that case the plaintiff, a butcher, employed non-unionists. The defendants, officials of a trade union, requested the plaintiff to dismiss the non-unionists. The plaintiff refused, but agreed to allow them to join the defendants' union, and to pay their admission fees. The defendants refused to admit them and insisted on their dismissal. The plaintiff refused. The defendants then approached one Munce, another butcher, whose employees were members of their union and warned him that, unless he stopped buying meat from the plaintiff, his employees would be called out on strike. Munce succumbed to their threat and withdrew his patronage from the plaintiff. The House of Lords held that the defendants were liable for conspiracy to injure the plaintiff in his business.

Clearly where persons or union officials combine unlawfully to injure a man in his trade, they will be liable for the tort of civil conspiracy, as it will be an unlawful purpose. As the court emphasised in the Quinn case the acts of the union officials were wrongful and malicious in that they acted in conspiracy, not for the sole purpose of advancing their own interest as workmen, but for the sole purpose of injuring the plaintiff in his trade.\textsuperscript{609}

However, it seems that there will be no liability for civil conspiracy if the real purpose of the combination is to forward or to enhance the trade object of a union, even though in the process damage is caused to another person. The predominant purpose of the combination seems to be the crucial deciding factor for liability. Thus, where there is more than one purpose for a combination, liability must depend on ascertaining the predominant purpose. If that predominant purpose is to damage another person and damage results, it will amount to tortuous conspiracy. But if the predominant purpose is the lawful

\textsuperscript{608}[1900]AC 495.
\textsuperscript{609}Ibid., p. 515.

4. Criminal Liability

The focus of this section and trade unions may be on trade unions by their combination of persons combining the criminal conspiracy, and the sanctions imposed by the Trade Union (Amendment) Act 201.

\textsuperscript{6}See Crofter Hand-Woven Harris Ltd v. Mogul Steamship Co. Ltd.\textsuperscript{1892}AC 25.
\textsuperscript{1}[1942]AC 435, 455.
\textsuperscript{2}Ibid, p. 469.
his case for civil things: (i) agreement unlawful purpose; and established in Quinn v. ther, employed non-union, requested the plaintiff refused, but union, and to pay to admit them and fed. The defendants, whose employees claim that, unless he employees would be to their threat and the House of Lords conspiracy to injure the officials combine will be liable for the purpose. As the if the union officials in conspiracy, not interest as workmen, in his trade. no liability for civil is to forward or in the process dominant purpose of deciding factor for purpose for a ascertaining the pose is to damage amount to tortuous see is the lawful protection or promotion of any lawful interest of the combiners, it will not amount to a tortious conspiracy, even though it causes damages to another person.610

In Mogul Steamship Co. v. Macgregor Gow & Co.611 the House of Lords decided that it was legitimate for certain tea dealers by their combination to undercut their rivals, so far as the predominant purpose was to further their legitimate trade interest. In Crofter Hand-Woven Harris Tweed Co. v. Veitch612, for example, the court stated that:

“A perfectly lawful strike may aim at dislocating the employer’s business for the moment, but its real object is to secure better wages or conditions for the workers. The true contrast is, I think, between the case where the object is the legitimate benefit of the combiners and the case where the object is deliberate damage without any such just cause.”613

It was further emphasised that the predominant purpose of the combination was the legitimate promotion of the interest of the persons combining and, since the means employed were neither criminal nor tortuous in themselves, the combination was not unlawful.614

4. Criminal Liability for Exercising the Right to Strike

The focus of this section is on the sanctions which workers and trade unions may be subjected to for exercising the right to strike. The areas examined in the following sections below are criminal conspiracy, conspiracy to extort, picketing and penal sanctions imposed by the Trade Disputes Act 1990 and the Trade Union (Amendment) Act 2005.
4.1 Criminal Conspiracy

Workers may be liable for the crime of criminal conspiracy where they agree to take part, or actually take part, in a strike action. As previously noted, a conspiracy consists in the agreement of two or more persons to do an unlawful act by an unlawful means. Although the crime of conspiracy is constituted by mere agreement to commit an unlawful act, the civil right of action is not complete unless the conspirators undertake an act in pursuance of their agreement causing damage to the plaintiff. Thus, the crime of conspiracy is committed by the mere agreement of two or more persons to effect any unlawful purpose whether as their ultimate aim or only as a means to it. The crime is complete if there is such an agreement, even if nothing is done in pursuance of it. In Majekodunmi v. R the West African Court of Appeal said:

"The gist of the offence of criminal conspiracy lies, not in doing the act or effecting the purpose for which the conspiracy is formed, but in the forming of the scheme or the agreement between the parties."\(^{617}\)

The offence of criminal conspiracy is contained in the Criminal Code.\(^{618}\) The relevant sections for the purposes of liability for strike action are contained in sections 516 to 518 which provide generally to the effect that any person who conspires to effect any unlawful purpose or to effect any lawful purpose by any unlawful means is guilty of an offence, and is liable to imprisonment for two years.\(^{619}\)

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\(^{616}\)[1952] 14 WACA 64.

\(^{617}\)Ibid.

\(^{618}\)The Criminal Code is contained in the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 1990 and it applies in the states that make up Southern Nigeria. The Penal Code is contained in the Penal Code Law, Chapter 89, Laws of Northern Nigeria 1963 and it applies in the states that make up Northern Nigeria.

\(^{619}\)Section 516 provides in full that: "Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Nigeria would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is the greatest punishment to which he is less than imprisonment for any Act, or omission which is liable to be punished under the laws in force in the place where such Act or omission is done.\(^{620}\)

Under the laws of Nigeria can be prosecuted for the crime of criminal conspiracy for any Act committed by an agreement to effect any unlawful purpose. An example is the National Union undertakes the industrial requirements of the Trade Union Act 1990.

\(^{620}\)See section 2 of the Crime Act 1990.
These provisions show that the offence of criminal conspiracy is committed where a person conspires with another to commit an offence. To constitute an offence, there must be an act or omission which renders the person doing the act or making the omission liable to punishment under the criminal code, or under any Act, or law.\(^{620}\)

Under the provisions employees and trade unions in Nigeria can be prosecuted not only for going on strike but also for criminal conspiracy for agreeing together to undertake a strike action. Merely agreeing to undertake strike action is tantamount to an agreement to effect an unlawful purpose. Furthermore, where employees actually embark on a strike action there will be no need to prove that the agreement for the strike was to effect an unlawful purpose. An example of such a situation would be an agreement by the National Union of Road Transport Workers (NURTW) to undertake industrial action without complying with the requirements of the Trade Disputes Act 1990.

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\(^{619}\)See section 2 of the Criminal Code Chapter 77 Laws of the Federation of Nigeria 1990.
Subsections 1-7 of section 518 contain very wide provisions which could hinder employees and trade unions in their pursuit of legitimate industrial action. Nigerian courts have not had the opportunity to consider the actual application of this section to strikes and industrial disputes, but an illustration can be found in the Australian case of Brisbane Shipwrights' Provident Union v. Heggie\textsuperscript{621} where the equivalent of subsection 4 was applied.\textsuperscript{622} In that case, the respondent was employed as a shipwright in the service of the Queensland government at one of the government docks. He was asked to join the union and pay the admission fees but he refused. The union then informed the government that, unless the respondent was dismissed, the union would call out its men employed at the dock on strike. It was held that the union action amounted to conspiracy to injure the respondent in his trade or profession.\textsuperscript{623}

4.2 Conspiracy to Extort by Deceit

Employees, trade unions and their officials may also be liable under section 422 of the Nigerian Criminal Code for conspiracy to extort by deceit. This section provides that any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a felony, and is liable to imprisonment for seven years.\textsuperscript{624}

Thus, where employees or trade union official conspire and threaten the employer to either increase the wages of the employees or face strike action this could amount to criminal liability for extortion. That unions can be prosecuted under this section is demonstrated by Ogundipe v. R.\textsuperscript{625} In that case the appellants, officials of a union of labourers who demanded higher wages, were charged with conspiracy to extort by deceit under section 422. The court held that the exercise of legitimate economic pressure which threatened the employer was evidence of conspiracy.

\textsuperscript{621}(1906) 3 CLR 686.
\textsuperscript{622}Although the case went to court as a civil, not criminal, conspiracy.
\textsuperscript{624}Section 422 Criminal Code 1990.
\textsuperscript{625}(1954) 14 WACA 465.
518 contain very wide powers and trade unions in their Nigerian courts have not actual application of this, but an illustration can be Shipwrights' Provident Valant of subsection 4 was employed as a government at one of to join the union and pay the union then informed the dock on strike. It was held conspiracy to injure the their officials may also be Nigerian Criminal Code for section provides that any by deceit or any fraudulent anythi public sold, or to other a particular person or any person, is guilty of a seven years. An union official conspire and increase the wages of the amount to criminal be prosecuted under this v. R. In that case the workers who demanded higher wages, were charged with conspiracy to extort. It was held that the appellants were not liable, but only on account of the lack of evidence of conspiracy to achieve their aim by any deceit or fraudulent means. The policy behind this provision seems to be that the exercise of the right to strike should not lead to illegitimate economic pressure on the employer.626

4.3 Penal Sanctions Imposed by the Labour Statutes

Both the Trade Disputes Act 2004 and the Trade Union (Amendment) Act 2005 provide for criminal sanctions where workers go on strike. Section 17 (2) of the Trade Disputes Act provides for a fine not exceeding ₦100.00 (US$0.84) or six months' imprisonment for individuals and in the case of a body corporate a body a fine of ₦1,000 (US$8.43) is imposed on conviction. The Trade Union (Amendment) Act provides in cases where the prohibition on the right to strike is breached for a fine of up to ₦10,000 (US$84.38) or six months' imprisonment or both the fine and imprisonment.627

A different approach is taken as regards essential services where the right to strike is explicitly prohibited in any circumstance. As previously noted, the Head of State is empowered to proscribe any trade union or association whose members are employed in essential services and who have engaged in acts calculated to disrupt the smooth running of any essential service or, where applicable, have wilfully failed to comply with the procedure for the settlement of trade disputes.628 Furthermore, strikers can be detained for acts prejudicial to industrial peace.629 In addition, such strikers can also be made liable for a fine of ₦10,000 (US$84.38) or six months' imprisonment or both.630

626 See Dimskal Shipping Co. v. ITWF [1991] 4 ALL ER 871.
627 Section 6(6)(a) Trade Union (Amendment) Act 2005.
628 Section 1 Trade Disputes (Essential Services) Act 1990.
629 Ibid, section 8.
630 Section 6(6)(a) Trade Union (Amendment) Act 2005.
5. Criminal Sanctions against the Right to Strike: Have They Been Effective?

The question may be asked at this stage as to how effective and realistic are the laws criminalising and banning strikes in Nigeria. Why should the exercise of the right to strike be criminalised when the proper thing to do is to seek for ways of reconciling the causes of conflict between the parties? However, despite the economic sanctions imposed by the employer and the physical sanctions imposed by the state, inexorably and unstoppably strikes continue to occur. Indeed, the industrial relations experience in Nigeria shows that the prohibition on strikes does not necessarily prevent workers from taking industrial action irrespective of what the law may provide to the contrary.631 However, these disciplinary penalties must nevertheless be seen as a method of curtailing the right to strike and of punishing those who strike.

There is no doubt that workers go on strike because they have real grievances about important issues which affect their well-being in the world of work. It is therefore important to find ways of solving the problems of workers rather than punishing them when they are constrained to go on strike in a bid to realise such legitimate demands. A progressive approach to good labour-relations does not lie in the imposition of stiff penalties for the exercise of the right to strike, but in speedily finding solutions to labour-management misunderstanding. Indeed, the ILO has ruled that the existence of heavy sanctions for strike action may well create more problems than sanctions does not favor industrial relations.632 Clear criminal liability by way of the ILO provision that no one or be subjected to penal sanctions for participating in a peaceful strike.

Another major reason to allow the criminal law to flourish in industry disputes is that it is to enforce criminal sanction action. Sending some the prison, for example, may cost example, 2,500 teachers be the Nigerian Union of Teaching Service Commission service. Although the strike the much-quoted UK Kent Miners’ Union was legislation. Summonses were pleaded guilty. All the leaders were imprisoned. However, the fines against the workers government was subsequently released the imprisoned Commission noted, this episode of penal sanctions for

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Right to Strike: Have stage as to how effective and banning strikes in the right to strike be as to how effective and banning strikes in the right to strike be is to seek for ways of the parties? However, by the employer and the state, inexorably and indeed, the industrial that the prohibition on provide to the contrary.631 nevertheless be seen as and of punishing those on strike because they which affect their before important to find rather than punishing strike in a bid to realise approach to good labour- stiff penalties for the finding solutions to need, the ILO has ruled strike action may well

create more problems than they resolve; the application of penal sanctions does not favour the development of harmonious industrial relations.632 Clearly the subjection of employees to criminal liability by way of fines and imprisonment is contrary to the ILO provision that no one should be deprived of their freedom or be subjected to penal sanctions for the act of organising or participating in a peaceful strike.633

Another major reason why it has been considered improper to allow the criminal law to play a significant part in the regulation of industrial disputes is that, in practice, it has been found difficult to enforce criminal sanctions against workers involved in a strike action. Sending some thousands of dockworkers workers to prison, for example, may not be a practical proposal. In 1978 for example, 2,500 teachers belonging to the Lagos State Branch of the Nigerian Union of Teachers (NUT) went on strike against the Teaching Services Commission’s failure to improve conditions of service. Although the strike was in breach of the law, the government did not prosecute the teachers apparently due to the practical futility of the execution of sanctions.634 This is similar to the much-quoted UK experience which involved the Betteshanger Colliery in Kent where, in 1941, 4,000 miners of the Kent Miners’ Union went on strike in breach of wartime legislation. Summonses were served on 1,000 workers, who later pleaded guilty. All the workers were fined and three of their leaders were imprisoned. However, it was not possible to enforce the fines against the workers because of their large numbers. The government was subsequently forced to abandon the case and also released the imprisoned union leaders. As the Donovan Commission noted, this episode confirmed “the fruitlessness of the use of penal sanctions for the purpose of enforcing industrial

Besides, the prosecution of the offenders may engender unpleasant reactions and consequences among the citizens. Indeed, criminal sanctions appear to have failed. Not only have they proved to be difficult to enforce, but their social desirability, especially when they involve imprisonment, is dubious. As Adeogun noted:

“That workers resort to industrial action even in the face of these stiff penalties vividly reminds us of what strikes are about. They are about grievances, actual or imagined, arising from industrial life. Unless a speedy and effective system is devised for resolving such grievances, strikes will surely take place, if only to focus the attention of the government and society at large on the grievances. It is therefore unrealistic to put a total ban on strikes. Undoubtedly, there is a need for some sort of statutory curb on the freedom to strike but, surely, a total ban runs counter to the principle of voluntary collective bargaining, the fostering of which is a declared policy of the State.”

From the foregoing, it is clear that the ban on strikes is not effective and not justifiable. Suppressing the right to strike does not enhance the development of labour-relations, and is contrary to contemporary democratic notions. As Kahn-Freund noted:

“No country I know of suppresses the freedom to strike in peace time, except dictatorships and countries practising active racial discrimination.... [A] legal system which suppresses the freedom to strike puts the

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636 A. A. Adeogun, From Contract to Status in Quest for Security (University of Lagos Press 1987), p. 44.
workers at the mercy of the employees. This - in all its simplicity - is the essence of the matter."

To be fair, Nigeria may not correctly be described as a dictatorship and it is not known for a policy of racial discrimination, but it is unfortunate that at a time when many nations are increasingly realising the need for a right to strike and taking appropriate steps to protect workers that Nigerian law, instead, is being more repressive of the most essential right of workers. This certainly will not make the workers happy and puts them at a disadvantage in labour-management relationships.

Furthermore, the question may be asked as to what is the wisdom behind retaining the ban on strikes in our statute books? It could be argued that penal sanctions operate as a deterrent to would-be strikers. However, whatever deterrent effect this might have is weakened in the face of strikes by workers, none of which has led to prosecutions by the government. As Adeogun noted:

“Our experience has shown that criminal sanctions do not have any appreciable or substantial effect on an existing strike nor do they have much effect as a deterrent from strike. It must be realised that at this level of human relations, criminal sanctions derive most of their effect not from the degree of penalty but from the social stigma attaching to them. And surely, if instead, the effect is to produce acclamation of the criminal, then, their value not only is lost but is reversed.”

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639 This can be evidenced by the fact that many national constitutions in Europe and Africa now expressly provide for the right to strike. See “International Observatory of Labour Law”<http://www.ilo.org/public/english/dialogue/ifpdial/l/observatory/profiles/ger.htm> (14 January 2007).
640 A. A. Adeogun, From Contract to Status in Quest for Security (University of Lagos Press, 1987), p.44.
The futility of the use of penal sanctions in industrial relations is also confirmed by worldwide experience, which shows that legal prohibitions and restrictions have been powerless to prevent strikes and that penal sanctions which remain on the statute book are of "theoretical, educational or residual value." However, the fact that Nigerian workers have embarked on strikes despite the heavy sanctions does not mean that they have the right to strike. Power does not legitimate itself. Having the economic or moral power to do something does not ipso facto confer any legal right to do it. It must be noted that the right to strike is a legal and not a sociological concept and where strikes are forbidden, as in the present situation of Nigeria, there is no such right – however frequently they may occur. But criminal sanctions certainly cannot solve the magic of foreclosing strikes by workers when they are determined to strike at all costs. A similar view was taken by Sir Hartley Shawcross in connection with the wartime industrial legislation in Great Britain. In 1946 he explained to the House of Commons:

"You might as well try to bring down a rocket bomb with a pea shooter, as try to stop a strike by the process of the criminal law. The way to stop strikes is not by policemen but by a conciliation officer, not by assize courts, but by the arbitration tribunals." There is no doubt that the imposition of penal sanctions has added further nails into the coffin of the right to strike in Nigeria. Indeed, the continued suppression of the right to strike remains a sore point in industrial relations in Nigeria and this underscores the fact that Nigerian law is deficient in the protection of the right to strike.

6. Conclusion

This article has examined the various types of liability which workers and their trade unions may be subjected to for exercising the right to strike. As has been seen, these liabilities include criminal conspiracy, intimidation, inducing breach of contract, picketing, fines, imprisonment and detention. More importantly, the employment relationship is severed during a strike action as a strike is deemed to amount to a breach of contract of employment.

Perhaps more importantly, the consequence of a strike being in breach of contract is severe for the worker in Nigeria. The employer is entitled to dismiss the worker or to refuse to pay wages. The employer’s power to impose these penalties is not diminished to any extent whatsoever by the fulfilment by the trade union of the statutory obligations which confer protection on trade unions, such as the giving of notice and taking ballots before industrial action. However, the concept that strike action constitutes a breach of contract justifying dismissal is not consistent with the fundamental principles surrounding the right to strike. A right to strike cannot be said to exist unless a worker can withdraw his labour without incurring the risk of dismissal and the attendant unemployment. Nigerian law is clearly thus at variance with international labour standards which prescribe that the contract of employment is suspended for the duration of the industrial action. This is the position taken by many democratic societies.

A further problem is that calling or supporting a strike by a trade union or other person will prima facie be unlawful. In the first place, this is because calling or supporting a strike constitutes an inducement of breach of contract of employment of the workers who heed the strike call, because a strike is breach of the contract of employment. Calling or supporting a strike may also constitute breach or interference with the performance of other contracts. It may also constitute any one of the wide variety of industrial torts, such as intimidation and civil conspiracy, for example.

Indeed, the existence of an array of legal sanctions for taking industrial action in Nigeria makes it clear that no one can
truly speak of a right to strike. Unions may be crushed financially, and deprived of their legal personality and their ability to represent their members in conciliation and arbitration procedures. Furthermore, workers could be denied benefits such as seniority, promotion, pension, and other beneficial schemes on account of the lack of continuity caused by exercising the right to strike. In addition, physical sanctions of fines and imprisonment are also imposed on those who exercise the right to strike. The situation would be different where there was a positive right to strike. Overall, the continued suppression of the right to strike demonstrates the failure of Nigerian law to respond to the legitimate aspirations of Nigerian workers by adequately protecting the right to strike.

In fact, among the rich countries, Nigeria is the least discriminatory. The segregation among the background that this challenges militating Nigeria.

INTRODUCTION
This article freedom from discrimination in the practice? There is constitutional and status discrimination in Nigeria. This is gender inequality of academic institutions. For instance, in some open manifestations of academic institutions that are repugnant to