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The Implementation of the 1977 Workman's Compensation Decree in Cameroon: The Common Law Perspective

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ABSTRACT

In Cameroon, many workers faced injuries and death almost daily in the industries and work place. In most cases, many of them either sustain minor injuries or are incapacitated for life while a handful of them die as a consequence of these fatal accidents which" arise out of and in the course of employment ". In order to prevent or minimize the staggering numbers of casualties in our industries, certain duties and responsibilities have been placed on employers and employees of labour under common law for the safety of the workers in their work places. A breach of any of these duties by the employers entitles the worker to claim compensation for the injury sustained in the course of executing the job. This paper adopts a qualitative approach in the analysis of primary and secondary data relevant to the subject equally employees interviews to some employers and works who have suffered from industrial accidents and been compensated or not. Some findings of this papers shows that, generally, the employer is required to purchase and maintain workers compensation insurance to protect against the lose covered under the law. An employer's liability policy may contain a condition that the insured shall take reasonable precautions to prevent accidents. Such condition will be satisfied by the insured taking precautions which can satisfy the test of reasonableness. This paper concludes that The Workman's Compensation Decree of 1977 in Cameroon is the law relating to injuries and death of workmen for injury by accident or death suffered in the course of their duties. Compensation of workers for industrial accidents and occupational disease has for a long time been viewed with considerable concern by law. The paper recommends that a safety committee with defined responsibilities charged with the duty to prevent industrial injury, ensures safety, training, maintenance of safety regulation, maintains personal protection scheme, investigates accidents, undertakes safety inspection, provides safety incentive schemes and organizes safety Campaigns amongst many others. Equally, A workman's ability to work is his only security but where he becomes unable to work due to injuries sustained at work place, compensation may be the only best security.

Keywords*: Workman, Injury, Accident, Disease, Compensation.*

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I. INTRODUCTION

If the workman is secured at the work place, he will endeavor to put his best because he is assured of adequate compensation in the event of any injury he might sustain in the course of employment. During the last twenty years of the 19th century, the Courts and legislators of Britain gradually began the show task of modifying the principles in work related calamities.[2]. It was realized that if workman's compensation laws are introduced, they will compel the employer to provide adequate safety devices which will reduce the number of accidents in industries and also make industrial life more attractive and at the same time increase the efficiency of the workman. Under the doctrine of common employment the employer is not liable for any injury sustain by a worker in the course of employment because the worker prior to his contract of employment, accepted all the risk that goes alongside. In 1880, the British Parliament posed the Employer's Liability Act of 1880 which cut down the availability of the doctrine of common employment. The Court responded by curtailing the availability of the defence of *volenti Non fit injuria*[3] in the case of *Smith v. Baker Co. Ltd*[4]. The general defense of voluntary assumption of risk is rarely available in cases of employer's liability because the Courts are unwilling to infer an agreement by the worker to run the risk of his employer's negligence merely because he remains in an unsafe employment[5].The Act also prohibited all contracts between employers and workmen to absolute liability if the workman was injured. Dependents were also given a right to sue for damages when the workman died. In spite of all these, the Act did not solve the fundamental problem inherent in a system based on the principle of negligence. There was still dissatisfaction because fault remained the basis for liability. This was very difficult to prove by the workman. Today in the world, Cameroon inclusive, a workman who sustains industrial accident will only be compensated for it if he shows that he suffered personal injury by accident "arising out of and in the course of the employment" which forms the basis of the 1977 Workman's Compensation Law in Cameroon.

II. THE COMMON LAW INTERPRETATION OF A WORKMAN

In our context, there is no comprehensive statutory definition of a "worker" meanwhile existing case law discloses a lack of consensus on what criteria are appropriate to determine whether a particular individual is an employee or is self-employed. In *Lee Ting Sang v Chung Chi- Keung*

[2] Available at: www.parliament.uk.tradeindustry.Retrieved on 28/12/2024
[3]Is a legal Latinism meaning he who accepts a risk blames no body for taking the risk, by accepting to work is accepting all the risk that goes with it.
[4] (1891)AC 325 at 362
[5] Winfield and Jolowicz on Tort 19th Edition.Sweet and Maxwell (2014)at 9028

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&ors[6]the Privy Council described the distinction as a 'most elusive question' for which no single and conclusive answer exists'[7].

One cause of this uncertainty is the sheer diversity of working arrangements, which makes them difficult to categories. The self-employed may include, for example, individuals who own a business and employ others to do the work, individuals who own a business and do the work themselves, freelancers who work for one or several companies, those who work for one or more employers on a casual basis, individuals working on a particular project of finite duration, and seasonal workers.

Between the individual who is definitely an employee and the individual who is definitely an independent contractor there exists a wide spectrum of relationships exhibiting characteristics of both employment and self-employment. It is from these ambiguous relationships that the complexity and uncertainty arise.

The workman,employee otherwise referred to as the "worker" under the 1992 Labour Code is that party to a contractual employment relationship who puts his services under the direction and control of the employer. By Section 1 (1) "a worker shall mean any person, irrespective of sex or nationality, who undertakes to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation as the employer".

From the above section of the labour code, is a civil servant a worker? The code unambiguously distinguished a worker from a civil servant. The latter is governed by the General Rules and Regulations of the Public Service. However, Article 12 and 13 of Ordinance No 95/003 of 17th August 1995 articulates that, a civil servant sent on secondment to private enterprises are regulated by the labour Code and not the Civil Service Rules and Regulations as was held by the Buea Court of Appeal decision in *Local Government Training Centre v Bobuin John Gemandze*[8] whereas the soundness of the decision has been challenged in the Supreme Court in *MIDENO v Nyanga Emmanuel*[9] where it was held that a civil servant does not lose his/her civil servant status upon secondment to a private service. Even though this situation is confusing, it is abundantly clear in spite of the *MIDENO case* that a civil servant seconded to a private enterprise is governed by the labour code not withstanding section 78(1) of the 1995 Decree on Civil Service Rules and Regulations. Therefore a civil servant on Secondment is a

[6]1990 ICR 409.
[7] Hong kong Law Journal-Vol.21 of 1991.Available at:https://web.law.hku.hk/hklj/1991-Vol-21.php.Retrieved on 27/12/2023.
[8]HCF/20/98/IM.
[9]HCM/L04/86.

Worker.

As earlier said there is no statutory comprehensive definition of a worker. What is usually obtained in Cameroon is the common law approach to determine a worker, which is a series of tests. The first to emerge was expounded by Lord Brown Well in *Yewen v Noakes*[10] known as the control test.

It should be noted that the control test, which applies nowadays in Cameroon has apparently changed its implementation. It is no longer what to do and how to do it, but the power of discipline that resides in the employer. Control has taken a disciplinary phase meaning that a worker is subject to discipline from his employer and not complete control[11]. The control test was confirmed in the Cameroonian case of *Upper Noun Valley Development Authority v Ange Mado*[12] It is obvious from the Cameroonian context that control is a primary feature in the employment relations because sections 1(2) and 23 of the labour Code 1992 read together stress on control as a defining feature of the contract of employment as enunciated in *Dorothy Wotani v Cameroon OIC*[13] and *CDC vs Akem Bessong Benbella.*[14]

Having relied on the control test the common law approach moves further to qualify a worker based on the shortcomings of the single control test. As a result the integration or organization test was formulated[15].This test concentrated on the degree of integration of a worker into the employer's organization. Denning L J *in Stevenson Jordan & Harrison Ltd v Macdonald and Evans***.**[16] said the relevant factors include whether any existing disciplinary or grievance procedure is applicable and whether the individual is included in any occupational benefit scheme.

Although these tests are appealing in their simplicity, the practice of adopting one single-factor test was soon abandoned, as it proved too flexible to cope with the constantly changing nature of modern employment practices. For example, in many cases a genuine independent contractor will be subject to as much control and be as much 'a part of the organization' as an employee. Conversely, many employees, because of their skills and expertise, will be subject to very little control.

Based on the above, Lord Denning argued that once the employment function is an integral part

[10](1890)6 BD 553.
[11] Yanou.M.A,*Labour Law Principles and Practice in Cameroon*. (Buea: REDEF2009)
[12]BCA/CS/88.
[13]HCF/L017/95.
[14] Suit No CASWP/267/97.
[15]Yanou. M.A, *Labour Law Principles and Practice in Cameroon*. (Buea: REDEF2009)
[16]1952 1 TLR 101 CA.

of an organization or enterprise, one will be considered an employee even if control is minimal. In the English case of *Cassidy v Ministry of Health*[17] where a patient went to the theatre with one stiff finger and was operated upon by Doctors on internship and after the operation he came out with all the fingers stiff. The hospital contended that, the Doctors were interns and not their workers. Lord Denning relying on the organizational test on grounds that, the theatre is a unit of the hospital orgnisation meant for Doctors and by doing operation in it you must therefore be part and parcel of the hospital, for which the hospital is liable. The organization test has been apparently adopted in Cameroon as was seen in *CDC v. Akem Bissong Benbella*.[18] In this case, the activities of vigilantes engaged to protect CDC crops were seen as integral to the operations of CDC. An attack on them when they were searching for produce stolen from CDC was considered as having occurred in the context of business of the company. Although providing security is neither central to the functioning of the appellant, nor ancillary to it, the Court noted that it was an integral component of the organization's work because it leads to the protection of agricultural produce which is the main stay of CDC.

Alongside the integration or organizational test the courts have developed a very flexible approach to the question of whether someone is an employee which involves consideration of any relevant factors of which the control and organizational test form part. This has become known as the multiple or mixed tests.

One of the earliest formulations of the multiple tests is to be found in *Ready mixed Concrete (South East).Ltd v. Minister of Pensions and National Insurance*[19] in which Mackenna J set out the following three questions: did the worker agree to provide his or her own work and skill in return for remuneration? Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of master and servant? Were the other provisions of the contract consistent with its being a contract of service?

Having stated the common law interpretation of a worker under the Cameroonian legal System as regards employment relations, (control, integrated and composite or multiple tests) it would be much easier to determine the consequences when he/she suffered personal injury by accident or contract a disease "arising out of and in the course of the employment" which forms the basis of the 1977 Workman's Compensation Law in Cameroon.

[17] [1951]2 KB.343
[18]Suit No CASWP/267/97.
[19](1968) 2 QB 497

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III. INJURY

The word "injury" in social security law mean damage caused to an employee by some unforeseen accident. The Workman's Compensation Decree of 1977[20] provides compensation only for personal injury which includes both psychological and physiological. Therefore every employer must safeguard his employee especially when he/she faces death or disability in the course of performing their duties.

Therefore, it is the duty and responsibility of the employer to include the welfare of the workers when an injury is the result of the employment. Furthermore it also provides compensation to certain classes of employers to their workmen for injury by accident in their establishment. If an employee was injured, or the injury resulted in death, those representing him or depends on him, could recover compensation for such injury or death, only when the injury could be attributed to the negligence of the employer. Hence, it was thought necessary that there should be a legislation which would secure workmen and their dependents against becoming objects of charity by making provision for a reasonable compensation for all such calamities incidental to the employment.

The following conditions must be fulfilled to make an employer liable to pay compensation to an employee**;** to wit. Injury must have been caused to an employee. Such an injury must have been caused by an accident and the accident must have arisen "out of and in the course of employment", while it must have resulted either in the death of the employee or causing total or partial disablement for a period exceeding three days[21].

On The contrary the employer is not liable to pay compensation if the employee was at the time of the accident under the influence of alcohol or drugs or the employee willfully disobeyed an order expressly given or a rule expressly framed to secure his safety knowing that certain guards or devices were specifically provided but willfully disregarded or removed such guards or devices.

In the case of *Lakshmibai vs. Chairman, Port Trustees, of Bombay*[22], an employee died due to heart disease while on duty. There was evidence to prove that he died as a result of strain on his heart from the particular work he was doing. The court held that the death was due to personal injury and hence the legal heirs of the employee were entitled to claim compensation.

Personal injury therefore includes nervous disorder or nervous shock. Hence for an Insurance

[20] law No 77/11 of 13 July 1977
[21] *ibid*
[22] LR 924:

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company to compensate a workman for personal injury it must include damage to the body or any harm or damage to the health, whether by accident or disease.

IV. ACCIDENT

In the case of *Fenton v. Tholay Co Ltd*[23] an English tort case from the House of Lords. In this case, Lord Macnaghten said, the expression "accident is used in the ordinary sense and means a mishap or an untoward event which is not expected or designed". In that case, the workman was employed in tightening a nut by a spanner when he suddenly fell down and felt something which he describes as a "tear" in his "inside," and it was found that he was ruptured.

Died of rupture, the House of Lords held that there was evidence to support the finding that it was a case of personal injury by accident arising "out of and in the course of employment". The Lord Chancellor concluded that, the injury was unexpected or without design in his part, the death or injury would be by accident although it was brought about by a rupture or some other cause, the basic and indispensible ingredient was that it was unexpected.

V. DISEASE

A disease is an impairment of health or a condition of abnormal functioning of the body[24].An occupational disease is a disease resulting from the performance of certain occupational activities[25]. This disease contracted by a workman must appear on a list of occupational diseases in force in Cameroon which is not exhaustive since new diseases can be added[26].

VI. A PREVENTION OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES UNDER THE WORKSMAN'S COMPENSATION 1977 DECREE IN CAMEROON

Employer's liability policy in Cameroon contains a condition that the insured shall take reasonable precautions to prevent accidents[27]. Such condition will be satisfied by the insured taking precautions which can satisfy the test of reasonableness. A safety committee with defined responsibilities charged with the duty to prevent industrial injury, ensures safety, training, maintenance of safety regulation, maintains personal protection scheme, investigates accidents, undertakes safety inspection, provides safety incentive schemes and organizes safety Campaigns amongst many others.

[23] (1904)UKHL 460
[24] A.S Hornby. Oxford Advanced Learner's Dictionary of Current English. Eight Edition(OXFORD University Press)
[25] Section 3 of law No 77/11 of 13 July 1977 on compensation of industrial accidents and occupational diseases.
[26] Section 3(2)
[27] *ibid*

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It is but normal that if a workman is taught how to use a machine, how to avoid accident, that is, giving him safety training because most of them do not know accidents could be checked to a great extent. Enforcement of safety regulations such that a workman should not clean a machine when it is in motion or work on an unfenced machine, then industrial injuries will be reduced too. Hence if this committee puts into practice all these methods and rules, accidents will be minimized.

Another way of reducing industrial accidents may include the provision of safe premises, adequate supervision, trained and competent persons to operate machines. Thus employing trained staff will help to reduce industrial accidents because they know how to operate the machines better than employing a staff who does not know how to operate them.

Equally if workers use their protective equipment well, such as clothing, which include hats, gloves, goggles, industrial accidents will be minimized to a greater extent.

The employer should maintain a first aid box and a mini clinic at the working environment. This will help prevent accidental injuries from occurring, such as wounds, and any person injured can be taken care of before going to the hospital.

Employers should endeavor to adequately guard dangerous parts of the machines and related equipment's because most workers often get involved in industrial accidents because of their dresses or parts of the machines and related equipment's or parts of the bodies getting caught in the machines. This was the situation in the case of *Lovelidge v. Anselin Olding and sons Ltd*[28] where a workman's cloth came in contact with and got caught in an unfenced machine resulting to serious bodily injury. But if this machine was fenced the accident would not have occurred. So if machines are well fenced all these types of accidents will be prevented.

Employers should practice good housekeeping including general cleanliness, proper arrangements, storage of tools and materials. For if a work place is untidy, it is highly probable that a workman can easily contract a disease from the bacteria growing in the waste.

Employers can prevent industrial accidents by prohibiting workers from working above normal working hours or not working beyond 5 to 6pm if the worker started work at 8am in the morning. Working above this time might lead to boredom or sleep while working because of tiredness. The danger is that the worker may cause an accident

An employer should equally prohibit a worker from coming to work while drunk because he will not be very conscious of what he is doing which might also lead to an accident due to his

[28] (1947) 2 AER 459

drunken state. Somehow the employer should ensure the proper emission of noxious gases as this may be a source of accident as the worker may be intoxicated by this emission and eventually being trapped by a machine. If after taking all these precautions and a worker is still injured, the employer cannot be said to be negligent in which case the employer's insurance company will compensate the worker as was held by Lord Greene (Master of the Rolls) in *Woolfall & Rimmer, Ltd. v Moyl & or*[29].

In this case the employer employed a competent foreman through whose negligence scaffolding being used at the insured's work place collapsed and injured some workmen. It was held that the foreman's negligence would not disentitle the insured employer from claiming under the policy for compensation for the workers who were injured since he had done everything possible to prevent the accident at the workplace.

In Cameroon the frequent occurrence of industrial accidents led the government to set up the National Social Insurance Fund, a service responsible for the prevention of occupational risk and for the supervision of hygiene and industrial safety so as to develop awareness of safety in undertakings and technical education[30], to educate employees, pupil workers and apprentice in technical institutions and training centres, also to organize seminars, conferences, competitions and film or slide shows with a view to popularizing the use of machines put at the disposal of workers and to protect them better against occupational risk. The service also makes regular inspection tours in firms, training institutes and work sites with a view to checking the equipment's and facilities used. It sees into it that industrial hygiene, safety regulations are respected.

(A) The Common Law Doctrine of Common Employment and the impact of the 1977 Decree

The 1977 Workmans'Compensation Decree in Cameroon originated from some weakness of the Common law of which the doctrine of common employment should be one.

Originally, under the "doctrine of common employment ″ otherwise known as "Fellow servant Rule" a master was not liable for any injury sustained by a worker ″arising from the normal course of his duty, ″ if such injury was caused by the servant's fellow worker. In this case any insurance company covering the industry will not compensate the victim for that injury based on this defense. This caused a lot of hardship to a worker who is left uncompensated for injuries

[29] (1941) 71 LI.L.Rep.15

[30] This is stipulated in S.I of Law No 74/11/1977 which ordains that, a service be set up with the NSIF in charge of prevention of occupational disease and industrial accidents in Cameroon.

because of this defense. Workers clamoured for a change because most injured workers were left at the mercy of charity or to seek the help from the fellow servants who caused the accident.

Subsequently, the Employer's Liability Act 1837 of England similar to the Workman's Compensatory Decree of 1977 in Cameroon was passed. This Act curtailed the effect of the doctrine of "common employment", since under the Act, a worker was not indemnified by an insurance company covering his industry if the workman sustained an industrial accident or injury due to a defect in the way work's machinery or plant was operated or from the negligence of some manager or servant acting as an agent of the master. Thus in 1948 the British Parliament abolished this doctrine in its entirety without any adverse effect on the rights of the Workman under the worker's compensation Act of 1925 and other ancillary statutes. The doctrine of common employment applied in Cameroon until 1959 when it was abolished.[31]

The present common law position is that the employer owes a duty of care to his employee's safety. This duty is personally placed on the employer as it cannot be delegated as per the common law maxim *delegatus non potest delegare*[32]. It is an absolute obligation on the employer, either a human person or a corporate body[33].Hereunder are some of these common law duties.

a. Duty to provide competent staff

One of the primary duties of an employer is the provision of competent staff as was enunciated in the famous case of *Wilson & Clyde co Ltd v English*[34]. Negligence by the employer in the choice of the employee would afford a ground of action more especially when a worker sustains injury due to lack of skills or negligent of a fellow worker. The law requires in doing so, the employer must act reasonably by ensuring that the worker employed is not only proficient but is given adequate instructions as may be necessary to carry his duty. It is therefore the duty of the employer to make sure that efficient, competent and diligent team of workers are chosen or employed. If such a duty is delegated, it is then done at the risk of the employer. The worker must be properly screened and examined before they are employed since it is not enough to employ competent workers without giving them adequate tools and sufficient supervision. This issue arose in the Nigerian case of *Western Nigerian Trading Co. v. Busari Ajao*[35] where it was held that, "it is an employer's duty at common law not to only instruct his workers but to follow

[31] Ordinance No. 59 of 31st December 1959 on the prevention of industrial accidents and occupational diseases
[32] A delegate can not delegate
[33] Winfield and Jolowicz on Tort 19th Edition.Sweet and Maxwell (2014)para 9003
[34] (1938) A.C. 57
[35](1965)ALL NLR 524

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up by reasonable supervision".

Now, having employed a "competent" worker, the employer must ensure that subsequent conduct of the worker does not cause injury to his fellow workman. In *Hudson v. Ridge Manufacturng Co.Ltd* [36]an employee was injured by the foolish pranks of a fellow worker who had indulged for four years in horse play during working hours at the expense of the plaintiff and other workers.The employer knew about the worker's conduct and had frequently warned the offending worker that someone might get hurt one day. In an action by the injured employee for damages for the company's negligence, the employers were held liable for the breach of their common law duty to provide competent workman. The pricinple deducible from *Hudson's* case is that if a workman by his habitual conduct, constitutes a source of danger to his fellow workman, it is the employer's duty to do something positive about it or remove him and failling to do so will amount to an act of negligence on the part of the employer.

b. Duty to provide good tools and plants

Having selected competent staff, the next duty of the employer is to supply proper tools, maintain a good plant and good premises. With regard to machinery and appliances used for production, the employer would be liable for any defect which he ought to know or would have discovered by reasonable inspection at reasonable intervals and in a reasonable manner. The law obliges the employer to buy tools from a reputable manufacturer and once this is done, the employer has discharged part of his duty under this head as was held in the case of *Davie v. New Merton Mill Ltd*[37]

"If a workman sustains injury from a tool not purchased from a reputable manufacturer, the insurance company will not indemnify the employer who pays compensation to the workers under the workman's compensation policy".

However where a tool is purchased from a reputable manufacturer and in the process of being used, there is a sign of defect of which the employer did not take all necessary precaution to correct, he will be liable if the tool causes injury to any worker as a result of that defect. Hence, in *Taylor v. Rover Co Ltd*[38] the employer bought a Chisel from a reputable dealer. Due to stiff handling in the cause of its use, the chisel broke and injured a worker. The employer did not take notice of the defect nor made arrangement for it repairs while being put into further use, the chisel again blinded another worker who then sued the employer for damages. The Court

[36] (1957) 2 QB 348
[37] (1959) A.C.604
[38](1966) 1 W.L.R.1491

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held that the employer was liable for breach of duty to provide good tools. Equally relevant here is the Nigerian case of *Obakoro v. Forex Co (Nig) Ltd*[39]

However, if there is a latent defect which could not by any means be detected, or if in the course of working, the tools become defective and the defect is not brought to the knowledge of the employer and could not by reasonable diligence have been discovered by him, the employer will not be liable.

c. Duty to provide safe system of work

A safe system of work does not only apply to the lay-out of the place of work, it also includes such matters like the physical lay-out of the job, the setting of the stage, so to speak, sequence in which the work is to be carried out, the provisions in proper places of warnings and notices, adequate facilities, ventilations and the issue of special instructions[40].

An employer will not have to discharge his duty or to provide a safe system of work unless he gives his workers proper instructions and reasonable supervisions. This in fact was the decision of Fatayi Williams in the case of *Western Nigerian trading Co. Ltd v. Busari Ajao*[41] where the learned judge held that, an employer is under an obligation not only to provide safety devices but to give strict instructions followed by reasonable supervision similarly expressed in *Jones v Manchester Corporation*[42]

The concept of a safe system of work has been extended in some cases, to places outside the lay-out of the working place, areas incidental to the work for example, working outside of the employer's immediate control, such as tea arrangements. A case in a point of such an extension can be seen in *Bradford v. Robinson Rentals Ltd* [43] where the plaintiff was sent on a long journey in an unheated van in the wintry English weather and as a result he suffered severe frost bite .The Court held that, the company is liable because a worker should not have been sent out on a long journey under such wintry condition without adequate precautions.

Another example is where a workman went to a tap to clean a tea cup, fell on a duck board which was slippery owing to seeds being splashed on it and no sawdust having being put to make it safe. The employer was held liable on negligence for not providing sawdust on the floor.

In the Cameroonian case of *Mbah James v. Alucam Co. Ltd* [44], the plaintiff, a driver of the above

[39](1973), 3 UILR.91
[40]Winfield and Jolowicz on Tort 19th Edition.Sweet and Maxwell (2014)pp 9024
[41] (1965)ALL NLR 524
[42] (1952) 2 QB,852.
[43] (1967), 1 ALL ER 267
[44]TPIB/42T/93(unreported)

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company was sent to deliver goods in a truck with a defective brakes system. The plaintiff had gone only 20KM when the brakes completely failed and as a result, he was involved in an accident in which he sustained injury. The court held that, the plaintiff was entitled to compensation because it was the duty of the employer to make sure that the brakes mechanism of the truck was in order before sending the plaintiff on mission.

Closely related to this head of duty is the fundamental need to provide protective equipment in some trades. Workers employed in such jobs as construction works, blasting material works and welding, are required to be provided with both gloves and goggles. It is worth mentioning here that even where such equipment is provided, the master may be liable if he does not give proper instructions. This was examined in *Western Nigerian Trading Co Ltd v Busari Ajao* (supra) where a workman was injured by a splinter of steel which escaped into his eye during an operation by a fellow worker and subsequently blinded him. The company's defense was that, a plastic goggle was provided for their workers. The court held that the provision of goggles was not enough to discharge the master's duty of care. It was the employer's duty at common law to ensure not only that goggles were provided but also that their used were by strict orders followed by reasonable supervision.

Another example is that of a one-eyed fitter when knocking a bolt from a vehicle which was raised from the floor of a garage, and a piece of metal flee, entered into his remaining eye resulting into total blindness. It was held that, the employers' were liable for failure to supply goggles to a one- eyed man employed in that work as was held in *Bradford v. Robinson Rentals* (Supra); However, where all necessary equipment and safe system of work have been provided to the employee but he refuses to make use of such safe appliances or refuses to comply with the employer's specific instructions or where the worker contributes to the negligence, the defense of contributory negligence will be raised which exonerates the employer from liability. The courts now have power in such cases to apportion the responsibility for the injury or damages suffered as to reduce the damages recoverable to such extent as deserved just and equitable having regard to the injured worker's share in the negligence. Thus, in *Qualcast (Wolver Hampton) Ltd v. Haynes*[45] the House of Lords held an employer not liable for injury suffered by a workman whose foot was splashed with molten metal because he refused to wear protective spats which were provided for him by his employer. In such a case, the insurance Company will not compensate the workman under the workman's compensation policy for his refusal to wear protective spats.

[45](1959) A.C.743-754

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d. Duty to warn against danger

The employer has the duty to warn his employees or keep them on guard against all dangerous places or machinery in the factory or work place. In case where an employee sustains injury because of the danger in the workplace which the employer did not warn against, the employer will be liable to pay the workman compensation. Hence, in *Joseph Ekiti v. Cimencam Co Ltd*[46], the plaintiff a cleaner of cimencam company fell in a pit located in the work place and was seriously injured. The employer refused to compensate him on the grounds that the employee was negligent because he was suppose to see the pit. The employee contended that his employer didn't warn him against it. The Court held that the employee was entitled to compensation,because it is the duty of the employer to warn his employees against all dangerous places in the factory or work place.

e. Employment of children and apprentices

As regards employment of children, the Labour Code provides that[47] "no child shall be employed in an enterprise even as an apprentice before the age of 14 except as otherwise authorized by an order of the Minister in charge of Labour taking account of local conditions and the Jobs which the child may be asked to do. As such once a child attains the age of 14 he may be employed in an enterprise or may even be an apprentice in an enterprise.[48]

VII. VICARIOUS LIABILITY

When applying the Common Law perspectives to the 1977 Workmans' Compensation Decree a master's duty covers not only the safety of his servant, but also to accept Liability for the acts or omission of such servants arising 'out of and in the course of employment' as the common law maxim goes *qui facet per allium facet per se*[49]. A master may be liable for the acts of his servant either because the acts had been expressly authorized or subsequently ratified or because they were done in the course of the servant employment. The fundamental duties of the employer at common Law among other legal incidents emanating from a Contract of employment differentiate such contract from other forms of relations. The legal responsibility of an employer arising from the master and servant relation takes two forms. First, there are the duties owed by the employer to the servant as an individual worker, secondly, there are liabilities of the employer to other workers and to a third party arising from the employer's default or from the default of one of his workers. This was the position of Learned Justice

[46] CPI/023B/2010
[47] *ibid*
[48] Section 86 (1)(2)(3)(4).
[49] Act of the servant binds the master

Mbiatem Charles of the High Court Fako in the Cameroonian case of *Maleya Bramlili Kalate Nekonoa & the next friend Elizabeth Dobgima v CDC*[50] where the plaintiff, a four year old child fell on the ground with the right quadrant and suffered bruises on the face. He was rushed to the CDC cottage hospital and was admitted and later contracted convulsion. One Doctor Monono prescribed a treatment known as steam inhalation where hot water will be put into a bucket and the child's face will be placed in a manner which the vapor coming out of it will enter his nostril and trigger him. The Nurse on duty, one Payne Joyce handed the child to the mother to administer the treatment so that she attends to other patients. The mother of the child having had a sleepless night fell asleep and the child's face splashed on the hot water resulting to superficial burns and *pretium doloris*[51]. The Court held the defendant vicariously liable and damages were awarded in favor of the plaintiff.

As has been stated, it is enough if the act of the servant was authorized by the employer or ratified by him or it was simply an act in the course of the servant employment. In applying the concept of "Scope of employment" the courts have, as has been noticed, not confined themselves to what is in the best interest of the employer.

(A) Conflict of the Common law and Statute for Injuries and Deaths under the Workman's Compensation Decree

Insurance plays an essential part in the operation of the worker's compensation law. While the law imposes the obligation to provide benefits to the employee, this responsibility may be transferred to the National Social Insurance Fund.

Statutorily an employer normally takes up a workman's compensation insurance policy under statute to cover his legal liabilities to his employees, since the duties of the employer do not end with the common law responsibilities *mutatis mutandi*[52]. This has become necessary in order to alleviate the sufferings of an injured workman and in view of the limitations imposed by common law.

There are certain additional duties imposed on employers by statute for the safety of their workers. A worker may be given compensation under statute which he would not otherwise have been entitled to under common law. A learned Nigerian Judge, Fatai Williams J., (as he then was) drew attention to this fact in the case of *Western Nigerian Trading Co. v. Busari Ajao* (supra) where he declared that:

[50] HCF/07/2010
[51] Loss of beauty
[52] Having some modifications and variations.

"A plaintiff may succeed in an action for breach of statutory duty even if he would have failed at common law and statute"

The High Court of Fako relied on the above dictum in the case of *Andong Forgwe v NSIF* [53] The plaintiff a Catholic Christian who believed in the miracles of Jesus Christ was a driver with the CDC and sent to Mukonje to deliver stores. On his way back, one of the rear tyres punctured and the vehicle lost control. Instead to concentrate on the steering of the vehicle, he held but the rosary of Jesus Christ he attached to the driving mirror in order to mitigate the accident. The vehicle summersaulted three times while he suffered serious injury. The defendant argued that, the plaintiff was negligent, instead trying to avoid the accident by concentrating on the steering, he concentrated on the rosary of Jesus Christ .Endeley CJ held that, the common law doctrine of negligence is immaterial in this circumstance, what is relevant is the fact that, the plaintiff is a worker with the CDC and he is injured out of and in the course of employment and therefore shall be compensated.

The advantage of statutory remedy given to the workman is that, the employee does not have to prove negligence as a condition precedent to the award of compensation. All that the employee needs to prove is that the law imposes a duty on the employer, that the duty is imposed for the benefit of the employee, that the employer has committed a breach of the duty and lastly that the employee has suffered a loss from the breach. The duties imposed on the employer by statute are usually strict because the object is to protect the worker. Most of these duties are contained in the Cameroon Factory Act of 1969, the minerals safe Mining Regulations, but by far the most important are the Factory Act and the Fencing Provision which would be discussed immediately.

(B) The Factory

A Factory is any premise in which or within where ten or more persons are employed in manual labour in any process for or incidental to the making of any article by way of trade or for purpose of gain and to which the employer or person employed therein has a right of access or control[54].

The word Factory has been judicially interpreted in the case *Wood v London County Council*[55] based on the requirements that, the objective must be "by way of trade or for the purpose of gain". If the object of the operation is not for trade or gain, then it will not be a factory even if the premises are used for making or adopting or repairing articles. Thus in ***Wood's*** case (supra),

[53] Suit No.011/84/SIDC/SWP/SEC of the South West Insurance Dispute Commission
[54]The English Factory Act of 1961 in its Section 175.
[55] (1941), 2 KB. 232.CA

where the process was the mining of the meat by an electrical machine in a kitchen of a Municipal Hospital, it was held that the kitchen was not a factory since the work was not carried on for the purpose of "trade" or "gain". Hence, any workman injured in such a place will not be compensated because he is not working in a factory and secondly the purpose for which he is working is not for "trade" or "gain".

The main aim of the factory Act is to play a prevention role by way of reducing or arresting the number of accidents in the industry. As Lord Pearson held in the case of *Stone v. Hayganth*[56] when he said:

"The Act should be regarded as a beneficial rather than a penal statute. Its object is to secure proper working conditions for persons employed to do manual labour in certain operations, and the penalties for failure to provide such conditions are merely incidental to that object"

The Factory Act expands the duty which an employer owes his employee at common law. It is the most extensive and protective legislation in Cameroon. The Factory Act of 1969 of Cameroon is patterned in the fashion of the English Factory Act of 1937 which was consolidated by subsequent amendments into the existing Factory Act of 1961.

(C) Fencing Provision

Every dangerous part of any machinery must be securely fenced before it is used or put in such a position or be of such condition as to be safe to every person working on the premises[57]. The duty imposed by the Act is absolute and will not avail an employer to say that he has taken reasonable steps to avoid injury to the victim. If machinery cannot be used in a fenced condition then it is illegal to use it. The question then is what type of tool or plant can be described as a machine? For example, is it every machinery found in a factory that can be brought within the provisions of the Act? The machinery must be used or installed for the purpose of manufacture as part of the equipment used in the factory. This view was approved by the House of Lords in the case of *British Railway Board v. Liprot*[58] In this case, the plaintiff was crushed between the body of a mobile crane and one of the chassis wheels. The crane was on rubber wheels and was being used in a scrap yard. The plaintiff brought an action for damages for the injury he received on the ground that his employer failed to fence a dangerous part of the machine and the House of Lords agreed with his contention because it was held that the crane was part of the equipment of the factory.

[56] (1968, A.C. 157)
[57] Section 27 to 38 of the Cameroon Factory Act provides for fencing the Factory.
[58] (1967)UKHL.

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To qualify as machinery, therefore, the engine must be used or forms part of the means of production so that any machine tool manufactured for sale in the factory will not qualify as machinery. This is because such a machine is a product of the factory as was held in the case of *Parvain v. Morton Machine Co. Ltd*[59] where a youth who was injured by a dangerous but unfenced part of a machine while he was cleaning it was disentitled from claiming for the injuries because the machine was made for sale and the Act does not apply to the product of the factory. The question that runs through our mind is, when does a machine become dangerous? It has been held in the case of *Chose v steel Co.of wales Ltd*[60] that a machine will be considered dangerous if in the ordinary course of human affairs, danger may reasonably be anticipated from the use of it without protection. It is no defense for the employer to say that, he has done all that is reasonable for the protection and the use of such machines. Hence, where a workman sustains an injury because of the use of the machine he will be compensated. The liability is absolute as has already been mentioned earlier. In as much as the machine is not fenced or the machine is not kept fenced, the employer shall be liable. That was the position in the case of *John Summers & Sons Ltd v. Frost*[61]where the employer actually fenced the machine but left seven- inch gab to permit grinding operations to be carried out. While operating the machine, the thumb of a worker came into contact with the grinding machine as he was grinding the edge of a metal bar.

The employers were held liable. The Court further expressed the view that if the machine could not be used when properly fenced, then it should not be used.

It has been established that, the factory Act is meant to protect the employees. But what is the actual evil or nature of mischief it intends to protect? Judicial decisions have shown that the Act is designed to protect the worker from coming into contact with the moving parts of dangerous machinery. But what if something interferes to bring the worker in contact with machinery thereby causing injury? This was the situation in the case of *Lovelidge v. Ansellin Oldin & sons*[62] when a worker's cloth came into contact with and got caught in a fenced machine. The employer was discharged of liability of the injury sustained by the worker. The court took the view that the provision of Section.22 of the 1956 Factory Act was designed to prevent a worker from coming into contact with the machine and that cloth is not an extension of a man.

[59] (1952), UKHL
[60] (1961), 2 ALL.ER 1953.
[61](1955) A.C 740
[62](1947) 2 ALL ER 459

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(D) The Common Law Perspectives in view of "Out of and in the course of employment"

For an injury caused by an accident to be compensable under a workers' compensation system, the accident must "arise out of employment" and occur "in the course of employment." "Arising out of employment" concerns the nature of the risk to which the employee was exposed at the time of the accident. An injury is not compensable unless it can be related to an employment risk. "Course of employment" concerns time, place and activity. In other words, when did the accident happen and, at that time, where was the employee and what was the employee doing?

Although an accident must both arise out of and occur in the course of employment, the two requirements are interrelated. A strong showing of one of the requirements may overcome a weak showing of the other. As will be discussed below, when an employee is squarely in the course of employment, that is, on the employer's premises during work hours performing job duties, almost any risk will be considered to be an employment risk. When the employee is less squarely in the course of employment, however, the risk must be more clearly related to employment. "Arising out of employment" requirement is analyzed under one of two tests, depending on the circumstances of the accident and injury. The test used most often is the *"positional risk"* test. Under the positional risk test, any risk is an employment risk if the employee is exposed to that risk while performing job duties at work during working hours. The second test, the *"increased risk"* test, requires that the employee shows that he had greater exposure to the risk because of employment. In Cameroon the increased risk test applies either by statute or when the employee is not squarely in the course of employment.

Under the positional risk test, a neutral risk or a personal risk is still considered an employment risk if the employee encountered that risk while squarely in the course of employment. In the case of *Harvey v. Caddo De Soto Cotton Oil Co.*,[63] an employee was working in his employer's hull house when the hull house was hit and destroyed by a tornado. The hull house collapsed, and the employee was killed. The appellate court held that the tornado was not an employment risk and, therefore, the accident did not arise out of employment. In the view of the appellate court, the accident did not arise out employment because the employee's employment did not expose him to any greater risk of harm from the tornado than the general public was exposed. The Louisiana Supreme Court, however, disagreed. Rejecting any consideration of the original source of the risk, the tornado, the court found the employee's "death was due to the fact that his employment necessitated that he be at the place where the accident occurred,

[63] 6 So.2d 742.Available at :www.casetext.com Retrieved on 30/12/2023

therefore, giving the compensation Act the liberal interpretation to which it is entitled, the accident arose out of, and was incidental to the employment."

The Harvey's case (supra), is an example of how an ostensibly neutral risk can be considered an employment risk if the employee is exposed to that risk while at work. A risk personal to the employee may also be considered an employment risk if an accident occurs while the employee is at work. In *Morris v. City of Opelousas*,[64]the court, following well established precedent, held that injuries sustained in a fall caused by an employee's epileptic seizure arose out of employment. The court noted that the fall arose out of employment because the employee was on the employer's premises performing tasks incidental to his employment at the time of the fall. That the fall may have been precipitated by a personal risk, an epileptic seizure, was of no consequence. The court explained that the "accident was not the epileptic attack which may have caused him to fall. The accident was the fall itself." The employee fell while squarely in the course of his employment, and, therefore, the fall arose out of his employment. In the case of *Mundy v. The Department of Health and Human Resources*[65] the plaintiff worked as a nurse for Charity Hospital. On the date of the accident, the plaintiff arrived at the hospital and proceeded to the elevator to take her to the eleventh floor where she was scheduled to work the night shift. A stranger entered the elevator with her. When the elevator stopped and the doors opened on the second floor, the man started stabbing Mundy. Mundy eventually pushed her assailant out of the elevator onto the second floor. Mundy then proceeded to her work station on the eleventh floor, where she received medical care.

Instead of filing a workers' compensation action, Mundy filed a tort action based on the alleged negligence of her employer. Her employer argued that her exclusive remedy was workers' compensation. The trial court, however, found that, the plaintiff 'had not come under the control or supervision of Charity Hospital at the time when the incident occurred," and therefore, she was not in the course and scope of her employment at the time of her injury.

The trial court's decision was eventually reviewed and affirmed by the Louisiana Supreme Court. The Supreme Court found that the employee was not in the course and scope of her employment because she "was attacked before she arrived at her work station and before she began her employment duties. Although she had entered the building in which her work station was located, she was in the public area of the building open to the public, on an elevator used by patients and visitors as well as employees."

[64] 572 So 2d 639.Available at :www.casetext.com Retrieved on 30/12/2023
[65] 593 So. 2d. Available at :www.casemine.com Retrieved on 30/12/2023.

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The fact that the employee was seeking tort damages, rather than workers' compensation benefits should not, but probably did, influence the result in Mundy. If the employee had sought workers' compensation benefits, would the court have denied those benefits because, although on her employer's premises, she had not reached her work station at the time of the attack? If instead of being attacked in the elevator, the employee had fallen as a result of an epileptic seizure, would the court have denied her workers' compensation benefits for injuries that she sustained in the fall?

Contrast Mundy with *Mitchell v. Brookshire Grocery Company.*[66], In Mitchell, the employee was a cashier at a grocery store. She completed her shift, clocked out and then made a purchase at the store. Walking to her car after making the purchase, she fell in a pot hole in the parking lot and was injured. The trial court, relying on Mundy, found that the accident did not arise out of employment and, therefore, denied workers' compensation benefits. The appellate court reversed and awarded benefits. Although the general public was exposed to the defect in the employer's parking lot, it was still an employment risk because employment required employees to encounter the defect more frequently than the general public. The court distinguished the defect in an employer's premises, which is peculiar and distinctive to that location, from the "independent, random act of violence by an unknown third party" in Mundy.

When an employee is performing job duties at work during work hours, the employee is clearly within the course of employment. Course of employment becomes less clear when the employee is not performing job duties, is away from the employer's premises, or, although on the employer's premises, has not yet begun or has already finished working. The employee is considered to be in the course of employment for a "reasonable" time before and after work hours. If the employer requires the employee to participate in an activity outside of work hours or away from the employer's premises, or if the employer derives substantial, direct benefit from such an activity, the employee will be considered in the course of employment. What is a "reasonable" amount of time to be at work before or after work hours? When is participation in an activity required instead of voluntary? When does an employer "directly and substantially" benefit from an employee's activity away from work? These are all factual questions to be determined on a case-by-case basis.

Courts have developed the following general rules regarding employees that are not squarely in the course of employ

[66]655 So.2d 339(1995) Avalable at : www.law.justia.com. Retrieved on 30/12/2023

a. The theory of Notional Extension

This theory also known as travelling to and from work was laid down by the Supreme Court in *Sowrastra Salt Manufacturing Company vs Bai Velu Raju*[67]. According to this theory, under certain circumstances, an employer is liable for injuries to his employee, even when the employee is away from the premises the accident occurred. Now, under this theory, the area where the employee passes and re-passes while going to and leaving the actual place of work is included. An employee may be regarded as being in the course of his employment, even though he had not reached or had left the actual premises where he was employed.

b. The threshold doctrine

The threshold doctrine usually applies to inherently dangerous conditions, like railroad tracks adjacent to an employer's premises, where employees are forced to walk across the tracks to reach the employer's premises. Some cases, however, have held that any dangerous condition that an employee encounters in the vicinity of employer's premises, even neighborhood with a high crime rate, can fall within the *"threshold doctrine.* In the case of *Hall v. House, Golden, Kingsmill & Ross*[68], a lawyer that worked in an office building in New Orleans, left work at the end of the day and walked two blocks to a lot where his car was parked. At the parking lot, two men hijacked him. Later, they murdered him. The court held that, under the *threshold doctrin*e, the lawyer was in the course of his employment when he was abducted because he had to have a car for work, had to park in the vicinity of the office building and all of the parking lots around the office building were in "an extremely high crime area."

Therefore "Arising out of Employment" could also be referred to as the "scope" of employment. Thus, the less cumbersome phrase "course and scope of employment" is often used in the place of "arising out of and "in the course of" employment."

(E) Compensation for injuries and death under the workman's compensation law

The Workman's Compensation Decree of 1977 is the law relating to injuries and death of workmen for injuries suffered in the course of their duties. The Decree states that an Employer should insure his workmen and himself in respect of all liability which he may incur under the provisions of the Decree.

Only a workman as defined by the Labour code of 1992[69] can claim compensation under the workman's compensation Decree, if he sustains injury "arising out of and in the course of the

[67] AIR 1958. Available at: www.legalbites.in.Labour Law. Retrived on 29/12/2023
[68]97-988 (La. 5 Cir. 5/27/98), 717 So.2d. Available at: www.whiteley .law.com.Retrieved on 30/12/2023.
[69] S.1(1)

employment".

An employer has only 3 days to report an industrial accident to the NSIF as per the workman's compensation Decree[70]. If the employer does not, the workman has three years within which to report it[71]**.**

If the accident is not reported within this time limit by both parties no defense is accepted by the Fund. In the case of *Chenze Tonga James v .NSIF*.[72] The plaintiff, a workman with the CDC sustained an industrial injury in 2011. He reported it to the employer who did not inform the Fund until 2016 that is five years after. The Fund refused to compensate the plaintiff on the grounds that it was time bared. The plaintiff took the fund to Court but the Court held in support of the Fund on the same grounds. The Fund asked the employer CDC being vicariously liable to indemnify workman.

a. Compensation in the case of partial permanent Incapacity

Permanent partial incapacity means that the workman incapacity reduces his earning capacity in any employment which he is capable of undertaking. It is said to take place when the incapacity is of such a nature as to reduce permanently the earning capacity of a workman below the level of his capacity prior to the accident or injury.

Any injury resulting from an industrial accident or occupational disease may be deem partial disability in one or two instances. For instance a worker "out of and in the course of employment" loses one of the eyes or legs are considered a partial permanent disability.

The compensation Decree[73] states that, if a workman sustains injury which result to partial permanent incapacity equal to or more than 20% assessed by a recognized industrial accident doctor, he is entitled to a periodical payment obtain by multiplying the annuity on yearly payment for permanent disablement by the percentage of disablement, if his capacity is to say 30% and his annuity 100.000frs then his periodical payment will be calculated as follows;

30/100 x 100000/1 =30000frs

Which will be paid quarterly until he dies as was the case of *Nche Thomas v NSIF*[74] where the plaintiff a worker of VAPSON Ltd fell one day from a ladder and injured his left leg. The Doctor recommended his incapacity at 25%. The compensation paid to him was calculated as shown from his salary of 80.000 FRS. Some of the common injuries on partial permanent incapacity

[70]Seection.17(2)
[71] Section 17(3)
[72] Unreported
[73]Section.26
[74] Ureported

as provided by Decree No 84/1541 of 1st December 1984 shall include the following;

Loss of arm at shoulder, Loss of arm between elbow and shoulder, Loss of arm at elbow, Loss of arm between wrist and shoulder, Loss of arm at wrist, Loss of four fingers and thumb of one hand, Loss of four fingers, Loss of thumb- both phalanges, Loss of leg above knees, Loss of leg below knees, Loss of foot Loss of eye-eye out, Loss of eye-sight off ,Loss of eye-lens off, Loss of eye-sight off except perception of light, Loss of hearing in one ear.

b. Compensation for total permanent incapacity.

Total permanent incapacity or disablement means that a workman never fully recovers from the injury or sickness. The percentage or aggregate percentage of loss of earning capacity amounts to 100% or more or when a workman is paralysed.

This is a condition where a workman because of industrial injury is unable to obtain any gainful employment as a result of the injury. In other words it is a situation where a workman will remain disabled for life. It is not sufficient for the workman to have sustained incapacity but the injury must affect his earning capacity. The compensation Decree of 1977[75] of Cameroon provides that if a workman is permanently incapacitated because of an industrial accident or disease, he is entitled to a monthly payment for total disablement equal to 85% of his monthly salary until he dies.

In addition, if the victim in order to perform the ordinary acts of life, he resorts to the aid of a third party, his Periodic payment is increased by an amount equal to the salary for a category one worker in the establishment he was working[76] .Some of the common injuries on total permanent incapacity as provided by Decree No 84/1541 of 1st December 1984 shall include the following;

Loss of two limbs, Loss of both hands or all fingers and both thumbs, Loss of both feet, Total loss of sight, Total paralysis, Injuries resulting in being bedridden permanently, Any other injury causing permanent total disablement, Loss of remaining eye by a one- eyed workman, Loss of remaining leg by a one-leg workman.

c. Compensation In the case of Temporary incapacity

Temporary incapacity is defined as a situation where a workman is unable to work because of an injury sustained at the work place but will clearly receive treatment and eventually return to work. In other words it is a situation where a workman is declared by a medical Doctor to be

[75] Section 23
[76] Section 25

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unfit to attend to his usual duties because of an industrial injury sustained at the work place which last for a short time.

If a workman sustains an industrial injury resulting to incapacity below 20% as assessed by a medical Doctor, it is known as partial or temporary incapacity as per the compensation Law[77]. In this situation, the workman is entitled to an allowance equal to four times his amount of basic pay corresponding to the degree on percentage of his incapacity. For example if his incapacity is 10% and his annual basic salary is 100.000frs, his compensation will be calculated in this manner.

10 /100 x 100000/1 x 4 = 40.000frs

Payment is usually done in a lump sum. Thus in *Ebong Joseph Akong v. NSIF*[78] the plaintiff was a workman of FOURGEROLLE which was in charge of the construction of SONARA. He sustained injury while lifting a large stone. His incapacity was 15 % as the Doctor assessed. His compensation was calculated as shown above from his salary of 150.000 frs**.**

d. Dependents or Survivors Benefits

If an industrial accident leads to the workman's death, the NSIF will compensate his survivors. They are entitled to some periodical payment paid by the Fund[79] as per the decree[80].

The following shall be considered beneficiary to the deceased.

Divorced or separated spouse who have obtained alimony[81]

Remarried spouse when their present spouse have no taxable income[82]

Dependent children below 21 years of the deceased as defined in the family allowance code[83]

The parents or grandparents who are dependent of the victim[84].

To be entitled to dependent benefits, the beneficiary must prove that he depended either wholly or partially on the deceased earnings and because of his death he has suffered pecuniary loss[85].

The amount of the periodic payment paid is same to that paid to a permanently incapacitated workman as stipulated by the Decree[86].

[77] Section 27
[78] Unreported
[79] Section 29
[80] Section 30(a)
[81] Section 30(b)
[82]Section 30(c)
[83]Section 30(d)
[84] Section30(e)
[85] Section 30(f)
[86] Section 31

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e. Funeral benefits

If a workman sustains industrial injury and dies, his heirs, assigns, and agents are entitled to funeral benefits as provided by the Workman's Compensation Law of 1977[87]. This benefit is to be distributed to all the people, family and non-family members who took part in organizing the funeral. The funeral expenses include; the supply of a zinc coffin or its standard depending whether the place of death is the same with place of burial. The transportation of the corpse from the place where he died to his usual residence or to another place of burial chosen by his family. The transportation of his family and luggage from place where he died to usual place of residence. Where these services are provided by the employer then it is mandatory for the NSIF to reimburse her[88].

f. Medical Benefits

Medical benefits account for about 2/3 of the total benefits payable by NSIF under the compensation Law to an injured workman or who happens to die. The benefits are paid to the family who has spent money on treatment before the demise of the victim[89].

g. Medical Treatment

If a workman sustains an industrial injury and informs the employer, it is his duty to ensure that the workman is given first aid. After which he has to inform the company Doctor and later take him to the medical center of the industry. If the workman refuses and dies, the Fund will not compensate the dependents because his death came as a result of his own willful misconduct[90].

h. **Medical Expenses**

The Fund compensates an injured workman for all the medical expenses incurred during treatment. A workman is advised to keep all the receipts of drugs, hospital bills incurred which will be tendered to the Fund for reimbursement. The medical bills include the following.

Drug, surgery fees, cost of pharmaceutical products and hospitalization fees, X-Rays and laboratory fees. Transportation cost from his usual residence to the hospital was applicable. Expense, of the person accompanying the victim if his state of health requires such assistance. All these medical expenses will be calculated and reimbursed by the Fund to a victim of an

[87] Section 29
[88] Article 23 of Decree No 78/547/ of 28 December 1978
[89] Article 2 of Decree No 78/547/ of 28 December 1978
[90] Article 3

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industrial accident as provide by the Decree[91].

It should be pointed out that the Fund reimburses only reasonable medical expenses. Medical expenses considered too exorbitant will not be reimbursed[92].

VIII. CONCLUSION

The application of the 1977 Workmans' Compensation Decree in Cameroon: The Common Law Perspectives is safeguarded under several pieces of legislation such as the Cameroon Constitution, labour code and the Workman's Compensation Decree of 1977. Some of these legislations addressed in this article include, the prevention of industrial accidents and occupational diseases, the factory Act, the fencing provision, employers liability under common law and statutes for injuries and death, in tandem, the doctrine of common liability is also highlighted with inherent duty of the employer, such as the duty to provide competent staff, good tools and plants, safe system of work and to warn against danger. Also in this article, the right of pregnant women, rest period and annual leave, and the employment of children and apprentices are also a focal point.

This article finally ends with the common law view of "out of and in the course of employment" based on the theory of notional extension and the thresh hold doctrine.

[91] Article 36
[92] Article 37

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IX. BIBLIOGRAPHY

- Advisory Council on Social Security (ACSS). (1938) 1977. Final report of the 2.Advisory Council on Social Security. In Essays on social security, by J. Douglas
- Anderson G.W. 'Social Democracy and the Limits of Rights' Constitutionalism' *Canadian Journal of Law and Jurisprudence* (2004) Vol 17: 31-53.
- Andrew Chapman, Human Rights in the Private Sphere(1993) pp. 3-4.
- Angrilli F and Cossalter V, 'Noise of Rotating Yarn in Textile *Machines' Noise Control Engineering Journal*(1984) Vol 22: 284-311.
- Ball, Robert M. 1988. The original understanding on social security: Implications for later developments. In Social security: Beyond the rhetoric of crisis, ed.
- Barbone L, Sanchez BL. Pensions and Social Security in Sub-Saharan Africa: Issues and Options. *African Region Working Paper Series* No.4, Washington DC: World Bank 1999.
- Badini, H. (2008). Critical study of the legal system of social security of Iran. *Journal of Law of Faculty of law and political science of University of Tehran,*
- Baehr P.R. The Promotion of Human Rights*:* Standard Setting, in: Non Governmental Human Rights.
- Ball, Robert M. 1988. The original understanding on social security: Implications for later developments. In Social security*: Beyond the rhetoric of crisis,* ed.
- Balzano J, 'Criminal Liability for Labour Safety Violations in the People'sRepublic of China' *Washington University Global Studies Law Review.* (2004) Vol 33:503-528.
- Boskin, M, and D. Puffert. 1988. The financial impact of social security by cohort under alternative financing assumptions. In Issues in contemporary retirement, ed.
- Braybrooke, David. 1976. "The Insoluble Problem of the Social
- Bryne A. G., Black's Law Dictionary (9th Edition) (West: West Publishing co.2004).
- Charmes J. The Informal Economy: Definition, Size, Contribution, Characteristics and Trends 2012.volume 2
- Checkoway, 'Lung Cancer Risk among Female Textile Workers Exposed to Endotoxin' *Journal of the National Cancer Institute*(2007) Vol 99: 5-19.

 [ISSN 2581-5369]

- Chaabane, Mohamed, Towards the universalization of social security: The experience of Tunisia *(ESS Paper No. 4, 2002).*
- Ewumbue, M. C. 'The Right to Inform and the 1990 Press Law in Cameroon'.*Africa Media Review*, 6(3). (1992).
- Fombad, Charles, an Overview of the Constitutional Framework of the Right to Social Security with Special Reference to South Africa, 2011, available at: *repository.up.ac.za/bitstream/handle/.../Fombad_Overview(2013).pdf?Retrieved on 2/08/2022*
- Harpur P, 'Occupational Health and Safety Duties to Protect Outworkers: The Failure of Regulatory Intervention and Calls for Reform'*Deakin Law Review* (2007) Vol 12: 1-24.
- Filgueira F, Manzi P. Pension and income transfers for old age Inter- and intra-generational distribution in comparative perspective, *ECLAC - Social Policy Series 2017;225:10.*
- G. Tunkin., Theory of International Law (*London, 1974), p. 81.*
- Heredero AG. Social security as a human right: The protection afforded by the European Convention on Human Rights, *Human rights files, No. 23, Council of Europe Publishing, F-67075 Strasbourg Cedex 2007, 1.*
- Gillion C. The Development and Reform of Social Security Pensions: *The Approach of the International Labour Office International Security Review 2000;53:35-63. http://dx.doi.org/10.1111/1468-246X.00062*
- Mouyema.E.K.H.D, *Les Fondements Universels De La Securite Sociale* (SOPECAM,1996)
- Mouyema E.K.H.D, *La Gestion D'un Organisme De Securite' Sociale* (SOPECAM,1996)
- Finnis. J, *Natural Law and Natural Rights*, (Oxford; Clarendon Press, 1980)
- Henry.S, *Basic Rights: Subsistence, Affluence and US Foreign Policy*. (Princeton: Priceton University Press, 1980)
- Harpur P, 'Regulating Multi-National Corporations Through State-Based Laws: Problems with Enforcing Human Rights Under The Alien Tort Statute' (2006 *International Law Journal*.(2006)Vol 13:18-27.

 [ISSN 2581-5369]

- Harpur P, 'Occupational Health and Safety: Statutory Protection or Human Right?' (Paper presented at the Australian Labour Law Association's*Third Biennial Conference*, Brisbane, September 2006.pp 1-23
- Harpur P, 'OHS Issues to the Board: Company Directors Face Jail and Fines For Their Companies' Lack Of Safety' *Bond University Corporate Governance E-Journal.(2008) 40-59.Hong kong Law Journal-Vol.21 of 1991*.
- International Labour Organisation (ILO), (2017).*World Social Protection Report (2017 -19).*
- J. Finnis, Natural Law and Natural Rights, (*Oxford; Clarendon Press, 1980*)pp 6-34
- J C. Vrooman.Rules of Relief; Institutions of Social Security and their impact.*Transaction publisher. (The Netherlands Institute for Social Research)*pp 111-126.
- John Lock "Lock's political philosophy "*The Stanford Encyclopedia of philosophy*,Winter ed(Edward N Zalta 2012)
- Jutting J. Social Security Systems in Low-Income Countries: Concepts, Constraints and the Need for Cooperation, *International Social Security Review 2000;53:3-24. http://dx.doi.org/10.1111/1468-246X.00102.*
- Katrougalo, George, Indivisibility of rights: The case of the right to social security, *available at: www.juridicas.unam.mx/wccl/ponencias/10/184.pd 43 pp 62-63.Retrieved on 2/08/2022*
- Kwon, Soonman, Achieving health insurance for all: Lessons from the Republic of Korea *(ESS Paper No. 1, 2002).*
- Lin B., 'Improving the Non-governmental System of Outsourcing Labour Regulation in China'*European Law Journal* (2007) Vol 13: 6- 29.
- Maleki, R. (2005). Social security as a human right. *Journal of constitutional rights. No. 5.*
- M.Boskin, and D. Puffert. (1988). *The financial impact of social security by cohort under alternative financing assumptions. In Issues in contemporary retirement*, ed. Rita Ricardo-Campbell and Edward Lazear, (Hoover Institution Press). pp 207-42

 [ISSN 2581-5369]

- M.Robinson and G.Davidson *Chambers 21st Century Dictionary*(2nd edition)(An imprint of Chambers Harrap Publishers Ltd 7 Hopetoun Crscent,Edingurgh,EH7 4Y(Harrap Publishers Ltd 1999).
- Mbodiam B. Cameroon, the Informal Sector weighs as much in GDP as in South Africa and Mauritius, but less than Nigeria 2017. *Accessible: https://www.businessincameroon.com/companies/13077263-in-cameroon.*
- M.P, Olivier, N. Smit, & E.R, Kalula, Introduction to Social Security, *Butterworths Publications*,2004.
- Nde Ngo Solange and Fonyoh Richard.The provision of social security protection to workers in Cameroon: what is the legal vacuum.*International Journal of Law, Justice and Jurisprudence* 2021;1(1) 46-56
- Omokaro E. Creating Sustainable Framework for Combating Elder Abuse Through Human Resource Development Institutions' Strengthening and Research: Case of Nigeria. Paper presented at the IFA International Workshop on Ageing and Age Friendly Environment, *Yaoundé, Cameroon 2013, 4.*
- Pougoue.P.G, *Code du Travail Camerounais Annote*.(Presses Universitaires d'Afrique,1997).
- Research, Network and Support Facility (RNSF). (2017). *Extending Coverage: Social Protection and Informal Economy, Pg. 6.*
- R, Dworkin,. Taking Rights Seriously, *(London: Duckworth, 1978)*
- Ransom, Roger, and Richard Sutch. 1986. The labor of older Americans: Retirement of men on and off the job, 1870-1937. *Journal of Economic History* 46 (1): 1-30.
- Rebecca Atkins, 'Multinational Enterprises and Workplace Reproductive Health: Extending Corporate Social Responsibility'*Vanderbilt Journal of Transnational Law* (2007) Vol 40: 233-241
- Rita Ricardo-Campbell and Edward Lazear, (Hoover Institution Press). pp 207-42
- Roper J, *Labour problems in West Africa*.(London: penguin, 1958).
- Shaw.M.N, *International Law* (14thed) (Cambridge: Cambridge University Press,2014).
- Timothy Driscoll, *The Epidemiology of Work-related Fatalities in Australia*

 [ISSN 2581-5369]

- Tumnde.M.S.*Insurance Law In Cameroon* Presses universitaires d' Afrique Yaounde-Cameroon(2012)
- Tunkin G., Theory of International Law (London, 1974**)**
- Udo,U& Belo, O. *Employment and Labour Law* in Nigeria.(Ibadan: University Press.2018).
- Werhane P, *The Black Well Encyclopedic Dictionary of Business Ethics* (Blackwell Publishers, 1977).
- Winfield and Jolowicz *on Tort* 19th Edition. Sweet and Maxwell (2014)pp 9003
- Yanou.M.A, *Labour Law Principles and Practice in Cameroon*. (Buea: REDEF2009)

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