

The Validity of the Doctrine of Restraint of Trade Under the Nigerian Labour Law

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ABSTRACT

The doctrine of restraint of trade presents itself as a double-edged sword that can both do and undo. While it seeks to prevent abuse in regards to certain trade practices on the one hand, it tends to proffer excessive abuse and violations of the individuals' rights to certain trade freedoms, if wrongly and widely applied, on the other hand. This article explores the various dimensions that cut across diverse boundaries touching human rights, ethics, equity, trade customs and other considerations. In as much as the doctrine of restraint of trade has come to stay, the courts as final arbiters have ensured that there be standards and guides, and this helped them to, in any given case, decide whether such agreement is valid or not. In conclusion, therefore, this work notes that there should be a legal framework, that will reduce likely and imaginary situations and circumstances that may give rise to litigations in black and white.

Keywords: *Doctrine of restraint, Labour law, Validity Trade, Freedom, litigation*

INTRODUCTION

A contract in restraint of trade¹ has been defined as one in which a party covenants to restrict his future liberty to exercise his trade, business or profession in such a manner and with such persons as he chooses.² The restraint requires that the employee should not disclose trade secrets, solicit other employees or customers, or enter into competition with the employer upon termination of the employment relationship.³ The restrictions in most cases are in two phases. One subsists during the pendency of the employment, the second takes effect immediately the contract of employment is determined.⁴ Whichever way, according to Akintunde,⁵ “it is a practice whereby an employer and his employee enter into a covenant for the purpose of restricting the right of the employee to engage in particular or specific types of business activities within a given area or locality and/or within a stipulated period of time.” The common law obligation of confidentiality on employees, it has been observed, is very uncertain. It is largely due to the absence of a legal framework on what is a valid restraint clause or otherwise, thus, leaving it wholly to the discretion of

judges which accounts for the divergent opinions by judges across jurisdictions. This is responsible for restrictive clauses in contracts of employment, which restrict employee activities.⁶ By this, the employee is placed under an obligation not to disclose or use for his benefit⁷ information, which is special and peculiar to the employer. It is a settled principle of law that parties are bound to the terms of a contract they freely entered.⁸ They are not allowed to disown their obligation and liabilities. The court will give full effect to the terms as contained in the contract agreement.⁹ What then is so distinguishing about contracts in restraint of trade that is always frowned at and, *prima facie* void,¹⁰ except if special circumstance is established to justify their validity and abidingness? Four types of restraint are identifiable within the category. These are:

- (a) restraints imposed on employees by employers;
- (b) restraints imposed on the vendor of a business by the purchaser of that business;
- (c) Restraints arising from combinations for the regulation of trade relations. That is, the regulation of supplies or promotion; and
- (d) Restraints accepted by distributors or merchants.¹¹

In this review, discussion will be focused on the trade restraints and the ingredients for the test of validity. The work shall explore the trade restraints, that is, what it actually means. In trying to draw a line between valid and void restraints, the concept “restraint of trade” in relation to the range or scope in terms of geographical coverage shall be considered; in terms of specialization; the nature of information and knowledge acquired. And finally, the ingredients for the test of validity.

RESTRAINT OF TRADE

The desire to protect against the disclosure of information considered to be confidential¹² by employee in his future conduct, employers have always insisted on the inclusion of restrictive covenants in contracts of employment. As earlier observed, restraint of trade can be in two phases, that is, during the pendency of employee’s employment and when the employment has been determined.¹³ By all standards, the former can be considered reasonable and the determination of their validity is less intricate since it is aimed at protecting employer’s business interest.¹⁴ But the latter poses a lot of problem when courts are called upon to assess their validity. The argument has always been that a contract in restraint of trade is of no effect once the contract of employment is determined. This is because the employer is not in anyway to protect himself from competition with a former employee.¹⁵ However, an employer is entitled to protect, through restrictive covenants in employment contracts, confidential information and trade secrets¹⁶ acquired by the employee in the course of his employment.

In spite of the need for an employer to protect his confidence and trade secrets, which has given rise to the insertion of restraint clauses in contracts of employment, the courts are always wary and slow in giving effect to such contracts. As a matter of general principle, covenants in restraint of trade are not enforceable. But such contracts or covenants can be enforced if they are proved to be reasonable in their scope, nature and content; they must be shown to have had regard to the interests of the parties and the general public.¹⁷ This is true, and is the correct position as long as the common law jurisdiction is concerned. In the United States of America, the position is slightly different, even amongst the States.¹⁸ Not all States¹⁹ permit employer's restraint on their former workers from competing with them.

In some States,²⁰ an employer may be allowed to restrain another from competing under certain circumstances depending on the nature of former employment. In the State of Colorado for example, "Management Personnel" may have restrictive covenant enforced against them while other categories of workers may not. In all other States of America,²¹ the position is similar with that of the common law countries to the effect that, an employer may restrict where, when and what type of work an employee may engage in at the end of the employment, provided the restriction is reasonable.²² The *locus classicus* on the modern law principle on restraint of trade is the case of *Nordenfelt v. Maxim Nordenfelt*,²³ where it was held that all covenants in restraint of trade are void as being contrary to public policy in the absence of special circumstances justifying them.

The court applied the principle of severance.²⁴ It further held that with the exception of the portion of the covenant prohibiting the defendant (Nordenfelt) from entering into any business competing or liable to compete in any way with that for the type being carried on by the respondent company, the rest of the restrictive covenants were reasonable and valid. The special circumstance which justified their validity were that; it protected the interest sold; Nordenfelt received a very huge sum of money; the wide area over which the business operations of the company extended necessitated a wide restraint clause, and that the transfer of the company was in the public interest in that it received from England the inventions of a foreigner and increased British trade.²⁵ It is therefore no longer sustained by any rule of common law, the division of restraint of trade into two classes, that is, general and partial. The former is considered *prima facie* void in all cases while the latter will only be void if unreasonable in the interest of the covenanting parties and the public. Today, there is no more such division. A restraint of trade agreement, whether partial or general is a restraint of trade, and once the object is to restrict a person's freedom in trade, it is *prima facie* void.²⁶ Apart from stating the

general rule at common law,²⁷ in *Koumoulis v. A. G. Leventis Motors Ltd*,²⁸ the court went further to observe that, on the facts of the case, it was satisfied that, “the covenant the subject of the complaint was reasonably necessary for the protection of the business interest of the respondent and, therefore valid and enforceable in law”²⁹. It is trite that any restraint by an employer, even with the consent of the employee considered by the court to be wider than is reasonably necessary to protect his business interest will be void.³⁰ An employer cannot hide under the law to immune or protect himself from competition that may come from his former employee. It must be noted that effective competitions keep the economy busy and vibrant. There is wisdom in this disability. For if allowed, consumers of goods and services would be denied the freedom of choice and talents will not be maximally utilized. This is without prejudice to the employer’s position, “for no doubt, an ex-employee owes his ex-employer a duty not to do any thing outside of normal competition that will have the effect of running down a system or a business he has immensely benefitted from.”³¹

RESTRAINT OF TRADE AND GEOGRAPHICAL COVERAGE

The scope of coverage in terms of geography is a cardinal requirement in determining the reasonableness or otherwise of a restraint clause. If an agreement in restraint of trade is intended to cover a range (and period) too wide and longer than is necessary for the protection of the employer’s/master’s business, it will not be given effect by the courts.³² It does not matter that the employee gave his consent. The promise by the employee not to divulge confidential information or engage in a particular type of trade or business is a qualified one. At least, it must be subject to limitations in time and area.³³

A restraint without limitation is generally taken to be one that is intended to shield the employer from mere competition and courts will not hesitate to declare such as being unreasonable and unenforceable. Thus, in *John Holt & Co. (Liverpool) Ltd. V. Chalmers*,³⁴ the employers and the workers entered into agreement that the worker was not to conduct business or serve any person in business within a wide area after the termination of his employment without the consent of the employers. The court held that the restriction went beyond what was necessary for the protection of the interests of the employers (covenantees) and that it was unreasonable with reference to the worker (covenanter). Similarly in *Green v. Sketchley Ltd*,³⁵ the employers sought to impose a restraint of trade clause preventing the employee (who had been a director of the company for twenty years) from engaging in any business similar to that of the employers throughout the United Kingdom. It was unanimously held by the Court of Appeal that the geographical area covered was too wide, and the restraint was void, because the company did not operate in most part

of United Kingdom. The principle is the same across jurisdictions. Just as it is in the common law jurisdiction, in the United States of America, “restrictions that are for an indefinite period of time, or prohibit the employee from working “anywhere in the United States”, may be considered unreasonable”.³⁶ The restraint must be co-extensive in area with the masters proprietary interests. *In Mason v. Provident Clothing and Supply Co*,³⁷ restraint on a salesman employed to sell clothes in the Islington area of London not to enter into a similar business within 25 miles of London, was held void on the ground that the area of restraint was a thousand times as large the area in which the salesman had been employed.

The Courts in Nigeria have towed the same path with courts in other jurisdictions. It was held in *Mesop Kholopikiaan v. Metal Furniture Nigeria Ltd*,³⁸ that a restraint clause which covered a radius of 800 miles from Ikeja, Lagos, where the defendant company was based is unreasonable and, therefore, void, for it does not only cover the whole of Nigeria, but also extended to some West African States. It should be noted that this principle is not a straight jacket one. Every case must be treated on its own merit based on the facts before the court. What is unreasonable and, therefore, void in one case may be reasonable and valid in another. Where for instance, the operation of a company cover the entire spectrum of a given country, a restraint prohibiting an employee from doing the prohibited act across the breath and length of the country will be reasonable and valid.³⁹

Another area where this principle of law is also operative is in cases of business vending. A purchaser of a business is entitled to protect its goodwill from the Competition of the vendor of the business. This principle however does not permit restraint designed to avoid competition. But if the competition is against the actual business sold, a restraint against such will be held valid,⁴⁰ but it must not be wider than necessary. The protection taken out by the purchaser must not be wider than necessary. The protection taken out by the purchaser must be in respect of a specific business or interest otherwise, it will be void. In the case of *Goldsoll v. Goldman*,⁴¹ where the business sold was that of dealing in “imitation Jewellery” in London, a restraint covering “real jewellery” and extending to a number of European countries was held unreasonable and void.⁴²

How long a restrictive covenant should operate is dependent on what is protected.⁴³ The duration should not be too long otherwise it will be seen as a cloak against mere competition. The length of time should be just enough to be seen as actually protecting the business interest of the covenantee and nothing more. It is on this ground that the court held in *M & S Drapers v. Reynold*,⁴⁴ as void a five year restraint on a collector’s salesman of drapery firm not to

canvass his employer's customers in view of the humble position he occupied in the firm. Similarly, in *Esso Petroleum Ltd. V. Harper's "Garage (Stourport) Ltd.*⁴⁵ the court declared as void the twenty one year restraint imposed on the petrol service station owner under a solus agreement for being unreasonably long. The duration of the restraint is usually considered along side factors like the nature of the covenantee's business and the status and role of the covenantor/employee in the company or firm. It has been observed⁴⁶ that "a restraint imposed for a very long period would not be held void, if in all the circumstances of the case it is reasonably necessary for the protection of the covenantor's legitimate proprietary interest."⁴⁷

SCOPE OF RESTRAINT OF TRADE AND SPECIALIZATION

The question whether or not the area of specialization of the employee is a cardinal factor in deciding the reasonableness or otherwise of restraint covenants is germane to the understanding of restraint of trade. If an employee specializes in a particular bit in a firm, should he be restrained from being engaged in other areas outside his specialization. It is only right that the restraint be confined to the particular trade he specializes on under his (former) employer/master. It does not matter that the employee gave his consent to a covenant which is sweeping in effect. Courts always intervene in declaring such clauses unreasonably too wide in coverage and, therefore, void. The case of *Attwood v. Lamont*⁴⁸ is very instructive on this. In this case, the covenantee carried on business as a draper, tailor and general out-fitter in a shop organized in several different departments each with a manager. The covenantor, who worked as head cutter and manager of the tailoring department, had nothing to do with other departments. He, however, agreed that he would not at any time carry on business as a tailor, dress maker etc. it was held that the restraint clause was invalid for it attempted to protect the full range of the masters business rather than the single section, the tailoring department, in which the defendant worked.

It will amount to absurdity and equally ridiculous for one to bind himself in an agreement from doing, in future, what has no nexus with his role in the masters business. But the general principle of law has been consistent in rendering void restrictive covenants that are seeming traps against the covenantor despite that he voluntarily bound himself. There would be nothing difficult in giving such contracts effect if the law permits. After all, parties are bound by the terms of contract they freely entered into.⁴⁹ But the effect of this on our societies would be denial of the unexploited potentials if such covenants are allowed to be. The public no doubt, will be tied to, a particular pattern and manner of service delivery whether or not they get satisfaction from it. Thus, in dismissing the claim of the plaintiff company against their employee for

committing a breach of a restraint clause in *Campaign Francaise del' Afrique Occidentale v. George E. Leuba*,⁵⁰ the court stated *inter alia*:

*As to the nature of the covenantor's employment there is absolutely no evidence. The agreement does not disclose his duties, nor does the evidence. And I have been unable to find any thing which may lead me to suppose that opportunities were afforded to the respondent to Acquire trade secrets and influence with customers or any special knowledge which may be used to the plaintiff's prejudice.*⁵¹

An employee who is not in position to acquire special knowledge or skills or have access to classified information/trade secrets (because of his position in the firm) ought not to be bothered in signing any agreement, because he can only divulge what he has in his possession. Even if he does sign, he will still not be bound. A different consideration will, however, apply if the covenantor was actually in custody of any confidential information or have actually acquired special skill that its application outside the master's business might be harmful to his proprietary interest.

Courts are usually favourably disposed to such covenants. Thus, in *Foster & Son Ltd. V. Suggett*,⁵² the defendant was a works engineer concerned with a secret process in the glass making industry. He covenanted that he would not be employed by a competitor anywhere in the United Kingdom for five years after leaving the employment with the plaintiffs. It was held that the covenant was reasonable and enforceable given the nature of the plaintiff's business and the nature of the defendant's function in the plaintiffs business.⁵³ There has to be a proprietary interest to protect before a restrictive covenant can be upheld even if it had met other requirements. A naked covenant is one in vacuum and as such unreasonable.⁵⁴

Restrictive covenants obtained by an employer from his employee (by duress) is *prima facie* void, whether or not it is to operate during or after the determination of the employment. It is expected that a covenantor's new job description or area of operation should be similar with the position held in the previous employment, otherwise it will be difficult to actually establish threat to business or proprietary interest. For instance, in *Mesrop Kholopkiaan v. Metal Furniture Nigeria Ltd*,⁵⁵ apart from the fact that the restraint covenant was procured by duress which voided it, it was found in favour of the covenantor that, though the two companies are into making of furniture, they were not doing exactly the same thing. For while the covenantee company was metal furniture makers, V.B.B., which the covenantor, later joined used wood and pipes for their own furniture. Again the defendant company (covenantee) failed to establish that the plaintiff was employed by V.B.B. to do the same or a similar type of job as he was doing while in the employment of the company.

The Nature of Information had and Knowledge Acquired

The nature of information gotten and the kind of knowledge acquired by the covenantor while in the masters business matters a great deal in deciding whether or not a restraint covenant should be enforced. In this regard, the observation of N. M. Selwyn⁵⁶ is apt and succinct when he said:

It is not possible to restrain an employee from disclosing to a future employer a special method of organization, as opposed to a secret process,⁵⁷ for one must draw a distinction between objective knowledge, such as trade secrets and list of customers, which are part of the employer's property,⁵⁸ and subjective knowledge which has been acquired by the employee, such as his general knowledge of the trade or industry, or his organizational ability.

The distinction between objective and subjective knowledge, though helpful, could be problematic, if left to the parties to determine. But the courts have laid the rule with definitive precision. Thus, in *Hebert Moris Ltd v. Saxelby*,⁵⁹ an engineer covenanted not to be engaged by a competitor for seven years after leaving his employment. This was held to be void. According to the court, it was a restraint on his technical skill and knowledge, which he had acquired by his own industry, observation and intelligence,⁶⁰ and this cannot be taken away from him. Touching on the distinction, the court explained further *inter alia*:

... on the other hand, a man's aptitudes, his skill, his dexterity, his manual or mental ability all those things which in sound philosophical language are not objective, but subjective ...ought not to be relinquished by the servant, they are not his master's property, they are his own property, they are himself' ..⁶¹

It is, therefore, clear from the foregoing and, thus, settled principle that it is subjective knowledge where it is inseparable from employee. A covenant in restraint of such will not only be void for being unreasonable but also for its absurdity, because it amounts to asking the servant to relinquish what is his own, his very self. However, knowledge that is objective in nature, that is, not part of the employee/servant, and hence separable, can be restrained. In other words, the employee could be made to part with such because it is his master's property. The rationale for this, apart from the separable or inseparable test, is to ensure that none of the parties is allowed undue advantage over the other. But it would be fairness to the employer, if his ex-employee, though with subjective knowledge is disallowed from direct competition capable of being harmful to his former master's business from which he has benefited.

THE VALIDITY TEST FOR RESTRICTIVE COVENANTS

The objection to restraint of trade is not without qualification. Although, *prima facie* void at common law, however, there are extrinsic factors that may justify their enforceability. These factors are also used in determining the reasonableness of a restraint clause in a contract of employment as it relates to the parties and the public.⁶² There seem not to be a clear cut distinction between reasonableness in relation to the parties involved and the public. What is reasonable or otherwise on grounds of public policy might not be different when viewed with reference to an individual. In *Esso Petroleum Ltd. V. Harper's Garage (Stourport) Ltd.*,⁶³ it was declared, *inter alia*:

*...there is not, as some cases seem to suggest, a separation between what is reasonable on grounds of public policy and what is reasonable as between the parties. There is one broad question: Is it in the interest of the community that the restraint should, as between the parties, be held to be reasonable and enforceable?*⁶⁴

In this case, interests are streamlined and zeroed in what is just and reasonable because public policy interest is the aggregation of the interests of the individuals in the community. Another condition is that the employer who seeks to enforce a restraint covenant is expected to show that he is entitled to exceptional proprietary interest which needs protection.⁶⁵ The Supreme Court of Nigeria in the case of *Andreas I. Koumoulis v. Leventis Motors Ltd.*,⁶⁶ said:

*Generally, all covenants in restraint of trade are prima facie unenforceable in common law. They are enforceable only if they are reasonable with reference to the interest of the parties concerned and the public...*⁶⁷

The significance of the above statement is that a worker may lose not only his job but also the right to certain other job,⁶⁸ which will definitely rob-off on the public.⁶⁹ In *Nordenfeld v. Nordenfeld Co.*,⁷⁰ the true view according to the court:

*"Is (that) the public have an interest in every person carrying on his trade freely, so has an individual. All interference with individual liberty of action in trading and all restraints of trade themselves, if there is nothing more, are contrary to public policy and therefore void..."*⁷¹

A severance of these interests (of the parties and that of the public) is not only unreasonable but absurd. The two are co-extant.⁷² It is possible to find in a contract in restraint of trade enforceable clauses. What has been the attitude of the court in such situations is to sever the reasonable clauses from the unreasonable ones. The court will then give effect to the one that is reasonable

while the unreasonable one is voided. This is known as the doctrine of severance of contract. The court does this through a device known as the “blue pencil rule”. For example, if there are terms, which are too wide, and others which are valid and reasonable, instead of allowing the entire terms to be defeated, the court will strike out the invalid while the valid are given effect.⁷³ They must be capable of being enforced separately. In *Lucas & Co. Ltd v. Mitchell*,⁷⁴ the defendant who was employed as a sales representative covenanted that after leaving the employment he would not deal in any goods similar to those which he had previously sold. Secondly, not to solicit orders from or supply any such goods to any customers of the firm within the Manchester Area. The court held that the first part of the covenant was clearly void for being a restraint on competition but upheld the second part as reasonable and enforceable.

Wrongful termination or dismissal of the employee by the employer will render void an agreement on restraint of trade which would have been otherwise valid and enforceable. Such an employer cannot at the same time claim the benefit of the restrictive covenant, for the whole contract is repudiated by him.⁷⁵ A provision in an agreement may be a restraint on trade and free movement of labour against a third party even though it may not be so expressly stated.⁷⁶ It appears such a third party (which may be a direct employee of either of the covenanting parties) may succeed in obtaining an order to set such an agreement aside. It does not matter that the affected third party is not privy to the contract.⁷⁷ The decision of the court in *Eastham v. New Castle Football Club Ltd*⁷⁸ is instructive. In that case the football clubs who were members of a Football Association agreed to a rule that if a footballer’s employment contract was terminated other football clubs would not employ him without the consent of the previous club. It was held that the system of “retain and transfer” operated by members of the English Football League was an undue restraint of labour and thus void for it restricted the freedom of footballers to earn their living.

CONCLUSION

Freedom in trade and movement of labour is highly cherished because of the opportunities it presents to employers and employees alike. However, a regulatory measure is quite needed for the survival and continuity of trades or businesses, not to the undue advantage or detriment of either of the parties. It is in realization of this that the doctrine of restraint of trade has been introduced and embraced in almost all jurisdictions including Nigeria. In as much as this has come to stay, the courts as final *arbiters* have ensured that there be standards and guides, and this helped them to, in any given case, decide whether such agreement is valid or not. But this is not without much ado. It is in light of this

that this work is concluding on the note that there should be a legal framework, that will reduce likely and imaginary situations and circumstances that may give rise to litigations in black and white. Also, for the avoidance of confusion in drawing a dividing line between valid and void contract in restraint of trade, a more definite and generally acceptable criteria should be evolved by our courts.

NOTES

- ¹ Otherwise called “restrictive trade covenant” and “non-complete agreement” in United Kingdom and the United States of America respectively.
- ² Furmston, (ed.), *Cheshire and Fifoot Law of Contract 13th ed.* (London: Butterworths, 1996) at 351.
- ³ D. D. Bennett & A. L. P. Hartman, *Employment Law for Business* (Irwin, McGraw Hill Companies, 2002) p.5.
- ⁴ Which may either be by operation of the law or the agreement of the parties.
- ⁵ A Emiola, *Nigerian Labour Law 3rd ed.* (Ogbomosho: Emiola Publishers Ltd, 2000). P.46
- ⁶ See Dix and Crump, *Contracts of Employment 6th ed.* (London: Butterworths, 1980) 121.
- ⁷ Whether during or after the employment.
- ⁸ See *Dix Beresford v. Royal Insurance Co.* (1938) A. C. 586 at 604, (1938) 2 ALL ER 602 at 610, where Lord Macmillian said that; “it is undeniably a principle of public policy that persons who enter into contractual engagements should be required to fulfill them”. Also in *George Ashibuogwu v. A.G of Bendel State and Anor* (1988) 1 NWLR (Pt.69) 138 at 158, Agbaje, J.S.C said, “the parties to a contract would prima facie be liable for their obligations under the contract”.
- ⁹ Except if they are against the law, in which case they may be declared void and of no effect. For instance, contracts to commit a crime, a tort or a fraud, contract prejudicial to the status of marriage, contracts prejudicial to public safety, contracts prejudicial to the administration of justice, contracts to promote corruption in public life and contracts to defraud the state of revenue etc. are void and unenforceable.
- ¹⁰ Essentially restraint after the termination of the employment.
- ¹¹ I. E. Sagay, *Nigerian Law of Contract 2nd ed.* (Ibadan, Spectrum Law Publishing, 2000) Pp.427-428.
- ¹² This does not cover agreement to cover up a crime. Wood V. C. puts it in a vivid phrase in the case of *Wood Ward v. Hutchins* (1972) 2 ALL ER 751; (1977) 1 WLR 760, that, “there is no confidence as to the disclosure of iniquity.”
- ¹³ Ibid
- ¹⁴ See *John Holt & Co. Ltd v. Chalmers* (1918)3 NLR 77.
- ¹⁵ See Dix & Crump, supra note 6, p. 121.
- ¹⁶ See *Herber Moris Ltd v. Saxelby* (1916) 1 AC 688.
- ¹⁷ O. Ogunniyi, *Nigerian Labour and Employment Law in Perspective 2nd ed.* (Ikeja, Folio Publishers Ltd, 2004) p.109
- ¹⁸ D.D. Bennett & A.L.P. Hartman, supra note 3, p.5
- ¹⁹ E.G. California, Montana, North Dakota and Oklahoma.
- ²⁰ Such as Alabama, Colorado, Florida, Oregon and Texas.
- ²¹ Other than those mentioned in notes 19 and 20, and the states of Colorado.

- ²² Shannon Miche, How to create a non-compete agreement, (Berekeley, C. A. Noto Press, 2001) Pp. 1/3, 1/4.
- ²³ (1894) A.C 535; (1891-4) ALLER Rep. 1.111.
- ²⁴ Whereby an invalid restraint clauses is excised from the valid.
- ²⁵ I.E. Sagay, *supra* note 11, p. 431.
- ²⁶ N.M. Selwyn, Law of Employment 3rd ed. (London, Butterworths, 1980) Pp. 282-3. See also the case of Koumoulis V. A.G. Leventis Motors Ltd (1971) 1 ALL NLR (Pt. 2) 144, where Udoma J. S. C. held that: "Generally all covenants in restraint of trade are *prima facie* unenforceable at common law. They are enforceable only if they are reasonable with reference to the interest of the parties concerned and of the public".
- ²⁷ That all contracts/agreements in restraint of trade without more are *prima facie* void and thus unenforceable.
- ²⁸ *Supra* note 26
- ²⁹ At p. 146.
- ³⁰ Dix & Crump, *supra* note 6, p. 110.
- ³¹ See Robb v. Green (1895) QB 315, and Wesex Dairies Ltd v. Smith (1935) 2 KB 80.
- ³² See for example the U.S. case of Earthweb v. Schlack, 71 F. Supp. 2nd ed. 299 (S.D.N.Y. 1999), where the court considered one year (restraint) in "Internet time" to be too burdensome, and as such unreasonable and unenforceable.
- ³³ N.M. Selwyn, *supra* note 26, p. 283. The position I the same in the United States of America, See D.D. Bennett, *supra* note 3, p.6.
- ³⁴ (1918) 3 NLR 77.
- ³⁵ (1979) 1 RLR 445.
- ³⁶ See D.D. Bennet & A.L.P. Hartman, *supra* note 3, p.6. However a restraint for one year against direct competition may be upheld³.
- ³⁷ (1913) A.C. 724.
- ³⁸ (Unresported) High Court of Lagos, Ikeja judicial Division, Suit No. IK/180/69 delivered on March 5th 1974.
- ³⁹ See Leontaritis v. Nigeria Textile Mills Ltd (1967) NCLR 114 at 123. Note that in the United States of America, once a restriction prohibits the worker from working anywhere in the U.S, it is considered unreasonable.
- ⁴⁰ I.E. Sagay, *supra* note 11, p. 440.
- ⁴¹ (1915) 1 Ch. 292.
- ⁴² See the case of Commercial Plastic ltd v. Vincent (1965) 1 Q.B. 623, (1964) 3 ALLER 545, where it was held that the protection legitimately required by the plaintiffs could only be in respect of their own business which was the production of adhesive tape and not the whole field of calendaring sheeting, and hence was void.
- ⁴³ See Earthweb v. Schlack, *supra*.
- ⁴⁵ (1968) A.C 269; (1967) 1 All ER 699.
- ⁴⁶ I.E. Sagay, *supra* note 11, p. 446.
- ⁴⁷ See the case of Fitch v. Dewes (1921) 2 AC 158 and Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co. Ltd, *supra*.
- ⁴⁸ (1920) 3 KB 571.
- ⁴⁹ Per Lord Macmillan in Beresford v. Royal Insurance Co. *supra*
- ⁵⁰ (1918) 3 NLR 67, see also Baker v. Herge Cock (1988) 39 Ch.D.520.
- ⁵¹ Per Webber, J at p. 75.
- ⁵² (1918) 35 TLR 87.
- ⁵³ See Langhton and Hawley v. Bapp. Industrial Supplies Ltd (1986) 1 RLR 245, and also Leotaritis v. Nigerian Textile Mills Ltd *supra*. Note that in the U.S.A, as it was

held in *Earthweb v. Schlack* supra, “reasonableness is measured by the realities of the industry and the nature of the employee’s occupation”.

⁵⁴ See *Vancouver Malt and Sake Brewing Co. Ltd v. Vancouver Breweries Ltd* (1934) AC 181.

⁵⁵ Supra.

⁵⁶ N.M. Selwyn, supra note 26, p. 284

⁵⁷ See *Foster v. Suggett* (supra)

⁵⁸ See *Robb v. Greer* (supra), where the court had no difficulty in deciding that the employee was obligated to the employer to keep good faith between them, and the employee had clearly contravened this duty by copying out the list of customers for his own use.

⁵⁹ Supra

⁶⁰ Which, however, came to fore because he had the opportunity and chance in the employer’s business.

⁶¹ Saxelby’s case, Per Lord Shaw, at p. 714.

⁶² See *Esso Petroleum Ltd. V. Harpers Garage (Stourport) Ltd* supra.

⁶³ Supra.

⁶⁴ Per Lord Pearce at p. 324.

⁶⁵ *Dix and Crump*, supra note 6 p. 122. See also N.M. Selwyn, supra note 26, p.283.

⁶⁶ Supra.

⁶⁷ Ibid, Per Udoma, J.S.C. at p.146.

⁶⁸ A. Emiola, supra note, 5 p. 46.

⁶⁹ The position in the United States of America is that restrictions that are for an indefinite period of time or that prohibit the employee from working anywhere in the United States is most likely to be considered unreasonable.

⁷⁰ Supra.

⁷¹ Ibid, Per Lord Macnaghten at p. 565. See *Whyatt v. Kreliner and fernan* (1933) 1 KB 793 where the Court of Appeal held unanimously that the restraint was invalid as being contrary to public interest as well as being unreasonable as between parties. The Court stated further that the covenant deprived Britain of the services of an able bodied man who might still have been of benefit to Britain in its own trade.

⁷² See the case of *Intone v. A Schroeder Music Publishing Co. Ltd* (1974) 1 All ER 171 at 178 where Russell, L. J. said, “this contract is restrictive of the ability of the plaintiff to turn to account his compositions to an extent and in a manner that is against the public interest”. See also *Clifford Davis management Ltd v. W. E.A. Records Ltd* (1975) 1 All ER 237; (1975) 1 WLR 61.

⁷³ N.M. Selwyn supra note 26, p.287

⁷⁴ (1974) Ch. 129; (1972) 3 All ER 689.

⁷⁵ See *General Billposting Co. v. Atkinson*. (1909) AC 118, (1909) A.E.R. 619.

⁷⁶ See *Stenhouse Australia Ltd v. Philips* (1974) A.C 391 when it was stated that an obligation to pay half of an insurance brokers gross commission to the former employer should, in all intents and purpose be treated as an agreement in restraint of trade.

⁷⁷ A. Emiola, supra note 5, p.51.

⁷⁸ (1963) 3 All ER 139; (1963) 3 WLR 574; (1964) Ch. 413