

MAY 2005 LEGAL ALERT: LEGAL REQUIREMENTS OF CARE IN BUSINESS.

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REACTIONS TO LAST LEGAL ALERT.

Our last Legal Alert was well received. It was published by Legal Brief Africa. Legal Brief Africa is sponsored by the International Bar Association and it reports continental African Legal Issues and news on a weekly basis. In the event that you did not receive or read this Legal Alert, you can find it on the home page of our web site, www.oseroghoassociates.com or under the heading, Newsletters. You can also find this Legal Alert in Legal Brief Africa's web site using this direct link <http://www.legalbrief.co.za/article.php?story=20050426114633555>

A popular business development Magazine, Moneywise, also published this Legal Alert in May 2005. You can find their publication on their web site www.moneywise-ng.com under the subject head, Moneywise Law which is on their home page.

We continue to welcome from you, your suggestions, recommendations, criticism, etc to our free educational effort.

LEGAL NEWS.

The Companies Income Tax Act (CITA) has attempted to encourage sports development in Nigeria by granting to registered limited liability companies some tax benefits when they make donations to sporting Associations, whether Federal or State. Also, limited liability companies can be established wholly and primarily for the development of sports and their profits are entirely exempted from tax. But like everything in life, these two categories of companies are required to comply with certain conditions before they can claim the tax benefits; this is in order for them not to use these exemptions as an avenue to evade paying taxes.

The Federal Board of Inland Revenue (FIBR), who is charged by Law to administer tax collection and administration in Nigeria, recently made a public clarification on the above two sets of companies as a result of differences that have arisen and taken years to resolve over when a company is entitled to claim tax benefits for sports donations or development.

For a limited liability company to claim tax deduction/benefit for sports promotion, it must satisfy the following conditions: -

- (i) It must show that the donation or contribution was made from the profits and not from the

capital of the company;

(ii) The company must show that the total amount of donation(s) made in the year of assessment for the tax did not exceed 10% of the company's assessed profits;

(iii) The company must finally show that the donation was not a secret payment received by the company.

For a company to be entitled to a 100% exemption from paying tax in Nigeria on the ground that it is established for sports development, the company must satisfy the following criteria: -

(a) The company must be engaged wholly and only in promoting sporting activities in Nigeria;

(b) The Directors and Shareholders of the company must not distribute among themselves the profits of the company;

(c) The profits of the company must be wholly expended for the purposes of promoting sporting activities in Nigeria;

(d) The company must be registered with the Federal and States Ministries of Sports, and the National Sports Commission;

(e) Members of the Board of Directors of the company must have a national spread - We reasonably presume national spread to mean the six geo-political zones of Nigeria;

(f) A representative of the Ministry of Sports must be a Director of the company;

(g) An application for the exemption from paying tax must be made to FIBR (and advisingly to the State Boards of Internal Revenue where the company may have offices).

Also in May 2005, the Annual Tax Conference was held in Abuja, Nigeria. A very passionate and exciting paper was delivered by Mr. Sina Agboluaje, the Managing Director of the Nigeria Export Processing Zones Authority (NEPZA), on the economic advantages of establishing your export business in any of the various free export processing zones (EPZs) located in Calabar, Onne, Maigatari, Lekki EPZ, Lekki BFTZ, Tinapa Business Resort FZ, etc all in Nigeria. We would present you with a synopsis of this paper in our next Legal Alert. You can also visit the website of the NEPZA for more information on EPZs in Nigeria: www.nepza.org

LEGAL ALERT: LEGAL REQUIREMENTS OF CARE & LIABILITY IN BUSINESS.

Many a time, some injury, loss, material inconvenience, etc is occasioned from a transaction or dealing and we naturally assume, most times emotionally, that a legal obligation and liability had been created and or breached to which compensation or restitution should be made to the injured party. Unfortunately, this may not always be correct because the legal ingredients or requirements and standards on cause, injury and compensation are not usually the same with the ordinary emotional day-to-day standards.

Let us consider together some examples for some further appreciation of this subject: -

? Visiting a Shopping Mall or a high brow eatery, a customer falls down and incurs some injury because the floor of the Mall is covered with first class marble which is slippery as a result of the Owner always having the floor polished.

? Visiting a 5 Star Hotel for a conference and other meetings, a Guest's car is stolen from the Hotel's parking lot, though the lot is marked 'Cars Parked at Owner's Risks'.

? Also, whilst in the above 5 Star Hotel, the jewellery and other valuables deposited in a high tech safe box in the Hotel Room are missing in spite of the Guest following all the instructions and ensuring that the safe is securely locked before leaving the Hotel for other business outside the Hotel Room.

? Meals taken at a popular high flyer restaurant results in food poisoning to some of the guest who eat the meal.

? A Bank transfers funds meant for the importation of a company's goods to a wrong party abroad in contravention of the company's written instructions.

? Returning from work, just around a bend, a car hits a broken down vehicle which is left unattended, causing injury.

The above are but general examples. Now the question remains, where any of the above or similar incidents as described above occurs, who is liable? In Law, to arrive at an answer, you and your Solicitor must ensure that the following exist: -

A. The full facts are truthfully disclosed as the Law only grants to you a relief if you disclose all the essential facts, as they occurred.

B. Determine whether a legal duty of care is owed to you by your patron?

C. And if the answer to question B above is in the affirmative, whether that legal duty was breached and what amount of damages was suffered?

What are the full facts?

Whether you have a claim or not would be dependent on the facts that exist and which you disclose to your Solicitor during your private interview. In a majority of cases that end up in Court, the Claimants unfortunately do not succeed because they did not work with their Solicitor ? or their Solicitor does not work sufficiently with the Client.

Stating all the facts in your Court papers is but half of the battle won. The other half is ensuring that you give full evidence in support of the facts you have stated in your claim papers.

What is a Legal Duty of Care?

It is paramount that no matter the facts, to succeed in a case of negligence, which Lawyers usually referred to as the breach of the legal duty of care, the Claimant must establish that the "accused" party owed him a duty of care, which was breached and from which injury was sustained.

A duty of care is owed when by your action or inaction or omission, some injury or loss is caused to another party. Ironically, the Law uses the test of "your neighbour" in determining when a duty of care is owed and breached. Note that this is irrespective of whether a contract exists between you and the party in contention.

On what is a duty of care, the Nigerian Supreme Court in its decision of Justice Anyah v. Imo Concorde Hotels Limited [2002] 12 (Part II) page 77 @ 88, cited with approval the English decision of Donoghue v. Stevenson [1932] AC 562 @ 580 where their Lords said "You must reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is your neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

Damages for breach of Duty of Care?

Determining the amount to be awarded where a duty of care is breached is always challenging to our Courts. This is because the Claimant is required to prove by credible and reliable evidence exactly what was lost as a result of the injury. Our Courts are very strict in the award of monetary compensation as they are not "father Christmas" that distributes presents at will.

Conclusion.

In all, it is recommended that in transacting your business, you exercise utmost care. This is especially as the standard of care required by the Law is that of a reasonable person and not necessarily that of an ordinary person or an expert. Customer satisfaction in these days of "cut throat" competition requires more diligence in keeping the existing profitable customers that you have, managing their perceptions of your business as opposed to enriching Lawyers with litigation and avoidable disputes.

MOTIVATIONAL QUOTE.

You can be anything you want to be; circumstances are the least of what you should worry about in achieving your dreams.

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