

THE DOCTRINE OF CONSTRUCTIVE DISMISSAL: MALAYSIAN LEGAL PERSPECTIVE

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ABSTRACT

This study shows different situations faced by employees giving rise to constructive dismissal in some cases, but in others a resignation may not be warranted and an employee must accept the changes made by the employer. This is a study which shows that the courts have wide jurisdiction either broadening the category of conduct that might constitute as constructive dismissal or allowing the employers greater rights in the context of restructuring business in order to achieve efficiency and economic of scale. The Industrial Relations Act of 1967 effectively prevents an employer from dismissing an employee without good cause. The purpose of this paper is to establish a profile of employees who have been dismissed and who seek reinstatement according to the procedures laid out in Section 20 of the Industrial Relations Act 1967.

Keywords: Constructive dismissal, resignation, reinstatement and section 20 Industrial Relations Act 1967.

DOKTRIN PEMECATAN KONSTRUKTIF : PERSPEKTIF UNDANG-UNDANG MALAYSIA

ABSTRAK

Kajian ini menunjukkan situasi yang berbeza yang dihadapi oleh pekerja yang menyebabkan pemecatan konstruktif dalam sesetengah kes, tetapi di pihak lain, peletakan jawatan mungkin tidak dibenarkan dan pekerja mesti menerima perubahan yang dibuat oleh majikan. Ini adalah satu kajian yang menunjukkan bahawa mahkamah mempunyai bidang kuasa yang luas sama ada memperluas kategori kelakuan yang mungkin merupakan pemecatan yang membina atau membenarkan majikan lebih banyak hak dalam konteks perniagaan penyusunan semula untuk mencapai kecekapan dan ekonomi skala. Akta Hubungan Perindustrian 1967 dengan berkesan menghalang majikan daripada menamatkan pekerja tanpa sebab yang baik. Tujuan kertas kerja ini adalah untuk mewujudkan profil pekerja yang telah diberhentikan dan yang meminta pengembalian semula mengikut prosedur yang ditetapkan dalam Seksyen 20 Akta Perhubungan Perusahaan 1967.

Kata kunci: *Pemecatan konstruktif, peletakan jawatan, pemulihan dan seksyen 20 Akta Perhubungan Perindustian 1967.*

INTRODUCTION

In exercising the management prerogatives, employers from time to time find it necessary to terminate the employees for many reasons. In the context of employment in Malaysia nowadays, all termination of employment initiated by the employer may be viewed as dismissals. In some cases, contract of employments have been terminated arbitrarily and the employees were dismissed without just cause or excuse. In certain circumstances, the employee may deem himself to be ‘constructively dismissed’ even though he was not being formally dismissed by his employer (Noraishah Mohd Radzi, 2008).

Constructive dismissal is based on different circumstances such as bonus or salary or harassment or victimization or unwarranted demotion or re-designating a position or removing facilities reflective of the position or demanding that the employee undertakes a transfer or poor treatment by the employer or amendments to working conditions. The actual conduct of the employer towards the employee is questionable. In some situations it is a single incident and in others it is the various acts by the employer that precipitates in a forced resignation of the said employee who is seeking constructive dismissal.

Workers have certain rights which are protected by statute. One of the more important of these rights is that of security of employment. Employees in Malaysia cannot have their services terminated at will by their employer (Maimunah Aminuddin, 2011). There is no legislation governing constructive dismissal, however there are cases decided by the judicial courts, including the Industrial Courts. It is a common law right of the employee to repudiate the contract of service.

In Malaysia, the concept of “constructive dismissal” was given judicial recognition by the then Supreme Court in *Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd* (1988) (1) MLJ 92. In that case, Wong Chee Hong was the Personnel & Industrial Relations Manager of Cathay Organisation (M) Sdn Bhd for the whole of Malaysia. In that capacity, he negotiated a Collective Agreement with the Union and was in the process of implementing the newly negotiated Collective Agreement when he was abruptly issued with a transfer order and asked to report for duty as Cinema Manager of Cathay’s cinema theatre at Overseas Union Garden, Kuala Lumpur. The Company also informed him that the terms and conditions of his employment remained unchanged. He refused to abide by the transfer order and lodged a complaint under Section 20 of the Industrial Relations Act, 1967. The Industrial Court held that he had been “constructively dismissed”. The Supreme Court upheld the decision of the Industrial Court and adopted the definition of constructive dismissal given by the English Court of Appeal in *Western Excavating (ECC) Ltd v. Sharp* (1978) IRLR 27. The Supreme Court said that “constructive dismissal” means no more than the common law right of an employee to repudiate his contract of service where the conduct of his employer is such that the employer is guilty of a breach going to the root of the contract of where he has evinced an intention no longer to be bound by the contract. In such a situation, the employee is entitled to regard himself as being dismissed and walk out of his employment.

THE CONCEPT AND DEFINITION OF ‘CONSTRUCTIVE DISMISSAL’

The doctrine of constructive dismissal is well established in English law, and the employee's right to constructive dismissal is specified in s 55(2)(c) of the Employment Protection (Consolidation) Act 1978 which stipulates that:

An employee shall be treated as dismissed by his employer if, but only if ... (a) the contract under which he is employed by the employer is terminated by the employer ... or (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

Dismissal is normally an action taken by an employer who terminates an employee's services. When an employee commits misconduct or fails to carry out his assigned work at a reasonable standard, the employer may find it necessary to dismiss the worker. Under such circumstances, the dismissal is an outcome of the behavior of the worker.

Under normal circumstances, when an employer decides to dismiss an employee, that decision of dismissal will either be communicated in writing or verbally. The employee will be informed that he or she has been dismissed. On the other hand, the concept of constructive dismissal pertains to the situations where the employer does nothing to communicate to the employee that he or she is being dismissed but by reason of the employer's actions, words or omissions, the employee feels that he has been dismissed. What is emphasized in this concept is the “employer's conduct” with respect to the particular employee concerned against the backdrop of the employee's contract of employment (Rajan A. Appasamy, 2007).

Constructive dismissal, however, occurs when an employer breaches an employee's contract. When the employer breaks the contract, the employee has the right to leave his job and claim that the employer's action amount to a dismissal (Maimunah Aminuddin, 2011). Any employee making such a claim must provide adequate proof that the employer had breached the employment contract if the claim is referred to the Industrial Court. Mere allegations are not sufficient.

Constructive dismissal is also defined, for the purpose of unfair dismissal, as where the employee terminates a contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct (M.N.D'Cruz, 2011). The key element of the definition of constructive dismissal is that the employee must have been entitled to leave without notice because of the employer's conduct. The word ‘entitled’ means that the employee could leave when the employer's behavior towards him was so unreasonable that he could not be expected to stay.

Constructive dismissal denotes the conduct of an employer, which is outrageous and makes continued employment impossible; a workman need not tolerate it and can therefore treat himself as dismissed. Constructive dismissal simply means that 'an employer does not like a workman. He does not want to dismiss him and face the consequences. He wants to ease the

workman out of his organization. Generally speaking he will make life so unbearable for the workman so as to drive the latter out of employment' (Balakrishnan Muniapan, 2008).

Dictionary of Law by L.B. Curzon (1993) defines the phrase 'constructive dismissal' as indirect to dismissal where, for example, the employer unilaterally changes the terms of the relationship so that the employee has no choice but to resign. The other definition of 'constructive dismissal' which was given by Oxford Dictionary of Law (1997) is termination of a contract of employment by an employee because his employer has shown that he does not intend to be bound by some essential term of the contract. Although the employee has resigned, he has the same right to apply to an Industrial Tribunal as one who has been unfairly dismissed by his employer.

In *Western Excavating (ECC) Ltd. V. Sharp* (1978) 1 QB 761 Lord Denning MR, explained fully the concept of constructive dismissal as follows:-

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains of, for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

The Supreme Court in *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd.* (1988) 1 MLJ p. 92, firmly established the doctrine of constructive dismissal in Malaysian employment law. As a result, constructive dismissal has been brought within the ambit of s 20 of the Industrial Relations Act 1967, which means dismissal rights under the law are now extended to those workmen who are compelled to resign because of the conduct of their employers. In this case ruling by Tun Salleh Abas LP (as he then was) had this to say of the doctrine of constructive dismissal (M.N.D'Cruz, 2011) :

"The common law has always recognized the right of an employee to terminate his contract of service and therefore to consider himself as discharged from further obligations if the employer is guilty of such breach as effects the foundation of the contract or if the employer as evinced or shown an intention not to be bound by it any longer. It was in an attempt to enlarge the right of the employee of unilateral termination of his contract beyond the perimeter of the common law by an unreasonable conduct of his employer that the expression 'constructive dismissal' was used."

Constructive dismissal could be likened to a double-edged sword. The employee's reason for resigning should be such that it affects the important fundamentals of his terms and conditions of service, or the employer's action was such that no reasonable employee could tolerate such an action. The timing of the resignation should also be reasonable soon, to avoid being accused of condonation. Any failure on the part of the employee to ensure these two conditions are fulfilled may result in his resignation not meeting the criteria for constructive dismissal and result in his claim being dismissed by the Court (Anantaraman, 2000).

The basic principle is that the employer's conduct must be such that, whether through a single act or a series of acts, it can be concluded that the employer has shown an intention not to continue with the employment relationship. The employment relationship must have broken down, fundamentally. As a result, an employee would be entitled to regard the contract as having been terminated by the employer, and that he has been dismissed. Such a situation is what is called a constructive dismissal.

BURDEN OF PROOF

In cases of indirect dismissal or constructive dismissal, the burden of proving the dismissal lies on the claimant. The claimant has to prove, on a balance of probabilities, that the employer has committed the breach, for example, if the transfer or demotion order were tainted with mala fide, i.e because of workers union activities, and, subsequently, the worker left the employment, the burden is on the claimant, and not on the company who denies the same. Similarly, when the claimant alleges that he was coerced to sign a resignation letter, or that he had signed a document which later turns out to be a resignation letter, the burden shall be on him (Ashgar Ali & Farheen Baig, 2009).

It is incumbent upon the claimant to establish the conditions constituting constructive dismissal as follows :

- a) That the employer, by its conduct, had breached the contract of employment;
- b) That the terms which had been breached went to the foundation of the contract;
- c) That the employee, pursuant to and by reasons of the aforesaid breach, had left the employment and not for some other reason; and
- d) That the employee left at an appropriate time soon after the breach complained of.

This principal, which was also used in the case of *MPH Bookstores Sdn Bhd v Lim Jet Seng*, Industrial Court Award No 179 of 1987. This case made it clear that in order for a claim of constructive dismissal to be successful, both limbs of the common law 'contract test' must be present. This required a consideration of the following:

- a) Whether the employer's conduct amounted to a breach of the contract or whether the employer had evinced an intention not to be bound by the contract any longer thereby entitling the workman to resign, and;
- b) Whether the workman had made up his mind to act at the appropriate point in time soon after the conduct complained of had taken place.

Therefore the onus of proof is on the workman and not the company to prove on a balance of probability that he or she was dismissed. The claimant has to prove that the company has breached the contract thereby entitling him or her to plead constructive dismissal. In order to prove that he/she has suffered constructive dismissal, an employee must prove that as a result of a breach of contract by his/her employer, the employee no longer intends to be bound by the essential terms of the contract (Balakrishnan Muniapan, 2008).

The above conditions were propounded by the English Court of Appeal in *Western Excavating (EEC) Ltd v Sharp* [1978] 1 All ER 713 :

Once the claimant has proven that he was constructively dismissed, the burden will then shift to the employer to prove that the dismissal was with just cause or excuse. The Industrial Court will, after considering the totality of the evidence, decide whether or not the claimant has discharged the burden of proof that he was constructively dismissed. If the claimant fails to fulfil his burden of making out a case of constructive dismissal, or where he leaves in circumstances where the above conditions are not met, the court will hold that the claimant had abandoned his employment, or that leaving the company was the claimant's own doing i.e. he had resigned from his employment voluntarily.

For example, in *Selangor Medical Centre v Zainal Abidin Md Tamami* (2002) 2 ILR 527, the Court held:

“There is no convincing evidence offered by the claimant to prove that the Company had failed the contract test or had repudiated the contract of employment. The claimant is not able to discharge the burden of proof which is on him to prove, on a balance of probabilities, that the Company, as the employer, had been guilty of any fundamental breach which goes to root of the contract or that the Company had evinced any intention of no longer to be bound by it. As such, the claimant is not entitled to regard his contract of employment as being terminated or that he was constructively dismissed.”

Constructive dismissal cases need to be analyzed from a different perspective unlike wrongful dismissal and unfair dismissal or from any other type of employment terminations, as in a constructive dismissal, the burden of proof is on the workman to prove that his/her employer is guilty.

BREACH OF IMPLIED TERM OF CONTRACT

Where the employer's conduct is such that it constitutes a significant or fundamental breach going to the root of a contract of employment and it shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, an employee is entitled to walk out on his employer and to treat himself as discharged from any further performance of his obligations under his or her contract of employment, on the ground that he has been “constructively dismissed”.

As a general proposition, it can be said that a unilateral variation of the contract of employment by the employer can amount to a fundamental breach and can be regarded as repudiatory conduct which gives rise to a complaint of constructive dismissal as it goes to the root of the contract of employment. The conduct complained may consist of a series of acts or incidents, some may be quite trivial but cumulatively can amount to a breach which is calculated to destroy or seriously damage the relationship of confidence and trust between the employer and employee which can amount to constructive dismissal.

In *Lewis v. Motorworld Garages Ltd* [1986] ICR 157, the claimant was demoted to an unfair position. His actual pay was reduced and he was criticized persistently over eight months by the employer and threatened with dismissal if his performance did not improve. The Court held that the Claimant was entitled to treat the conduct of the employer as amounting to a breach of the implied obligation of mutual trust and confidence and thereby enabling the Claimant to complain that he had been constructively dismissed. The Lord Justice Neill in this case stated the principle to be:

“It is now established that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of the contract of employment that the employer will not without reasonable and proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

The Court of Appeal in Lewis' case allowing the cumulative effect of a series of acts or incidents calculated to destroy the relationship of trust and confidence to become an unimpeachable ground for upholding the claim of constructive dismissal.

The breach of implied terms in proving that the employee was constructively be dismissed can be construed from the act of employer who attempts to make the employee's life so uncomfortable that he resigns or accepts the revised terms. Such an employer, having behaved in a totally unreasonable manner, then claims that he has not repudiated the contract and therefore, that the employee has no statutory right to claim either a redundancy payment or compensation for unfair dismissal (B Lobo, 1999).

TIME FACTOR

According to the law laid down by Lord Denning MR in the Court of Appeal case of *Western Excavating*, for a claim of constructive dismissal to succeed, the two limbs of the common law contract test must be present. The first condition is whether the employer's conduct amounted to a significant breach of the contract of employment. The second requirement of the contract test is whether the claimant resigned or walked out of his employment in response to the breach of the contract within a reasonable time. It is important that the workman makes up his mind and acts at the appropriate point in time soon after the employer's repudiatory act or conduct of which he complains had taken place:

If the workman continues for any length of time without actively rejecting or protesting against the act or conduct of the employer, he would be regarded as having elected to affirm the contract and would lose the right to treat himself as discharged. Although the period of one month has been held to be unreasonable for the claimant not to have acted against his employer either by protesting or giving notice to him and walking out of the job, in the final analysis it is for the Industrial Court to decide, on the facts of each case, whether the claimant resigned in response to the breach of contract within a reasonable time.

In *Pexxon Sdn Bhd v Sia Qui Yau, Johore* [1989] 1 ILR Aug 235, the claimant worked as a marketing executive; the company by reducing a number of benefits accruing to the claimant had indeed repudiated the contract by a breach that went to the root of the contract. From the facts of the case, it was shown that the letter to the claimant informing him of the reduction in his benefits was dated 17 July 1986 and the reply by the claimant was dated 28 August 1986, a lapse of one month and one week. From the circumstances of the case, the court assumed that the claimant had accepted the new terms. He therefore could not claim constructive dismissal.

In *MPH Bookstores Sdn Bhd v Lim Jet Seng* [1987] ILR June 585, the claimant who was of an executive status was posted to supervise a bookstore on 28 July 1985 and was thereby forced to carry out duties of a subordinate staff. He further contended that while his designation and salary remained unchanged, he was in fact demoted and was subject to unfair and oppressive working conditions designed to humiliate him and to force him to resign. However, his claim of constructive dismissal on 28 August 1985 failed since he continued in employment without a demur and this became fatal to his claim at a later date and he had thus forfeited his right to claim constructive dismissal.

In the case of *Kelang Container Terminal Sdn Bhd v Tuan Syed Khadzail bin Syed Salim* [1990] 1 ILR 9, another poignant reminder of this crucial requirement is the case of the personnel manager in Kelang Container Terminal Bhd. He was redesignated by a letter dated 5 December 1990 to the post of public affairs manager which he accepted. However, it was found later that he was relegated to a position performing work of a trivial nature. While the Industrial Court found the redesignation as tantamount to a significant breach which entitled him to resign, it, however, ruled that 'by signing the letter of acceptance and moving to his new job and staying on between 5 December 1990 to 24 January 1991, in the circumstances of the case, this implied that the claimant had agreed to an otherwise repudiatory change. He implied by the delay that he had elected to affirm the new terms of the contract.

In *Funai Electric (Malaysia) Sdn Bhd Johore v Salliah Ahmad* [1997] 2 ILR 1002, the claimant, an assistant manager (shipping) claimed constructive dismissal on the ground that her transfer to the service parts department resulted in erosion of her duties and responsibilities. She claimed constructive dismissal only after reporting to the new position and after being there for 12 days. The court allowed her claim of constructive dismissal notwithstanding the delay of 12 days on the ground that the claimant had to report to the new position and spending 12 days to find out whether it was indeed a demotion was not fatal to her claim.

Similarly, in *Titan Polyethylene (M) Sdn Bhd v Othman Busu* [1997] 3 ILR 505, when the company demoted the claimant from the position of group human resource manager to assistant to the vice-president of human resource, he wrote to the managing director to reconsider his decision and reinstate him in his former position. Pending the outcome of his appeal, the claimant worked under protest for 2.5 months before claiming constructive dismissal. He explained that the delay was there because he wanted to give the company a chance to remedy the breach. The court did not hold the delay as amounting to affirmation of the new terms of his contract.

In summary, it can be stated that the following conditions have to be satisfied in a claim for constructive dismissal as set out in *Secure Guards Sdn Bhd v Her Bhajan Kaur* (1996) 2 ILR 1342:

- a) There must be a breach of contract by the employer, which may be either an actual breach or an anticipatory breach.
- b) The breach must be sufficiently important to justify the employee resigning; or else it must be the last in a series of incidents which justify his/her leaving. However, a genuine, interpretation of the contract by the employer does not constitute a repudiation in law.
- c) The employee must leave soon in response to the breach and not for some unconnected reason.

For a complaint of constructive dismissal to succeed in the Industrial Court, it is essential that the employee should act with promptness. It is fatal to a claim based on constructive dismissal if there is undue delay in responding to the changes that were imposed by the employer or generally, in reacting to the repudiatory conduct of the employer.

REASONABLENESS TEST OR CONTRACT TEST

At first blush, it appears as if almost any type of conduct by the employer may be regarded as having the potential for a complaint of constructive dismissal. Initially, it was thought that “unreasonable conduct” by the employer could form the basis for a complaint of constructive dismissal. This is called the “reasonableness test”. However, the Courts very wisely rejected the reasonableness test and decided that the correct test is the “contract test”. What does this mean?

The contract test simply means that the complaint of constructive dismissal can only succeed where the employee is able to prove that the employer was guilty of conduct which was repudiatory of the contract, that is, that the employer had breached a fundamental term of the contract and therefore, the employee is entitled to deem that the contract of employment is being terminated. The emphasis here is the contract.

The Supreme Court in *Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd*, followed the English Court of Appeal in *Western Excavating (ECC) Ltd v. Sharp* (1978) 2 WLR 344 and held that the proper test is the contract test. Subsequently, we have had two Court of Appeal decisions on this issue. In *Ang Beng Teik v. Pan Global Textile Bhd* (1996) 3 MLJ p.137, the Court of Appeal held that the proper question to ask, in the context of a complaint of constructive

dismissal, is whether what happened to the workman was just and equitable. In doing so, the Court of Appeal appears to have liberalised the scope for complaints of constructive dismissal.

The Court of Appeal in *Ang Beng Teik's* case opined that the reference to common law and the contract test in *Wong Chee Hong's* case was pure obiter dicta. n29 Is it so? In *Wong Chee Hong's* case, the Industrial Court granted an award for the employee based on the finding of constructive dismissal. The High Court issued a writ of certiorari quashing the award on the ground that the constructive dismissal was not within the ambit of s 20(1) of the Act and therefore the Industrial Court had no jurisdiction. The appellant's argument was that the Industrial Court had jurisdiction to deal with cases relating to 'constructive dismissal'. The Supreme Court decided that the Industrial Court had jurisdiction to hear cases on 'constructive dismissal' as recognized under common law. The reference to constructive dismissal under common law is not pure obiter dicta. The crux of the appeal is on the jurisdiction of the Industrial Court under s 20 of the Act; ie whether it had jurisdiction on an employee who was constructively dismissed.

Ratio decidendi is defined as 'any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning by him'. In order for the Supreme Court in *Wong Chee Hong's* case to arrive at the conclusion that the Industrial Court had jurisdiction under section 20 of the Act on a matter pertaining to 'constructive dismissal', it was necessary for the Supreme Court to adopt the principle that the word 'dismissed' in s 20 of the Act should be understood in reference to the common law and the contract test (Farid Suffian, 1998).

It has been repeatedly held by our Courts that the proper approach in deciding whether constructive dismissal has taken place is not to ask oneself whether the employer's conduct was unfair or unreasonable ('the unreasonableness test') but whether "the conduct of the employer was such that the employer was guilty of a breach going to the root of the contract or whether he evinced an intention no longer to be bound by the contract.

Thus, it appears that even the superior Courts are still debating on the proper test for constructive dismissal. For the present, it would be prudent to take the position that the "contract test" is the proper test. However, the reasonableness of the employer's conduct is not irrelevant. Indeed, it may be very relevant in the context of a breach of an implied term as well as in the context of the way in which an express term of the contract of employment is used by the employer.

The reasonableness test within constructive dismissal and the emerging implied term of mutual trust and confidence within the concept of 'fairness' are more suited conceptions to be applied towards the contract of employment in private law. It is submitted that as the principle of 'fairness' encompasses the concept of 'reasonableness', and that the right to livelihood is now a constitutional right operating between private legal persons within the statutory scheme of unfair dismissal in Malaysia (Jain MP, 1989). The stage has been set for a movement away from the traditional contract test for constructive dismissal to a test based on reasonableness. It is further submitted that the implied term of mutual trust and confidence recognized within Malaysian employment law in actual fact regulates the 'reasonableness' and 'fairness' of the conduct of the

parties within the employment relationship in a variety of developing fact situations. As such, the concepts of 'reasonableness' and 'mutual trust and confidence' may be applied within the employment contract as aspects of substantive fairness. Such a development will produce a coherent body of law founded upon the constitutional principle of fairness (Vanitha Sundra Karean, 2007).

CONCLUSION

In conclusion, it may say that for the future, more emphasis will be placed on the employer's conduct with respect to express terms and the way in which the express terms are invoked or utilized, as well as the employer's conduct with respect to implied terms, particularly the implied term relating to co-operation and mutual trust and confidence. Employers would be well advised to give much thought to their actions and should refrain from conduct which is likely to lead the employee to think that he/she is being squeezed out of employment.

On the other hand, the employee must not delay in terminating the contract in response to the employer's breach. If there is a delay, he/she will be deemed to have accepted the employers breach. Apart from the above conditions, it would be advisable for the employee to inform the employer why he/she is pleading constructive dismissal before walking out on the employer. It is clear that under the broad concept of "constructive dismissal", the Courts are adding more and more responsibilities on employers. Employers must now shoulder greater responsibilities towards its employees in the context of health and safety, co-operation and trust and confidence etc.

Hence, what is in contemplation within this concept is a breach of a fundamental or essential term of the contract of employment. It is therefore, essential that the employee make up his mind soon after the changes to the terms of the contract are implemented by the employer. The concept of constructive dismissal is derived from the non-consensual unilateral variation of the contract of employment by the employer. Hence, the dissatisfied employee is entitled to consider the variation to be a repudiation of his contract and is entitled to complain that he had been constructively dismissed and so he must, as soon as he perceives that his contract has been varied without his consent, walk out of his employment. If he stays on without protest and continues to work under the new terms/conditions imposed on him by the employer, the employee will be regarded as having affirmed the contract and impliedly consented to these changes.

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