

The Institute of Legal Executives
LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW
EMPLOYMENT LAW

Time allowed: 3 hours

Each question carries a total of 25 marks

Answer FOUR only of the following EIGHT questions. This paper is divided into two sections. You MUST attempt at least ONE question from Section A and at least ONE question from Section B.

Full reasoning must be shown in answers – a yes or no answer will earn no marks.

Authorities and decided cases should be cited where appropriate.

Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Employment Law 2006-2007 by Richard Kidner, Oxford University Press. Invigilators may carry out spot checks.

SECTION A

1. (a) Alan is aged 50 and is a very successful copywriter for PDQ Advertising Agency. Three years ago he was the subject of a criminal assault when an acquaintance threw acid in his face, causing him the loss of an eye and severe facial scarring.

He has recently applied for a vacant position at his employers as an Account Executive, which would be a significant promotion involving more money. The job would involve a great deal of client contact and socialising.

Alan is unsuccessful in his application, the post being given to a 32 year old colleague, who is substantially less experienced than Alan. The only reason given in his "feedback" session with management is that it is important for the Agency to project a youthful image in all posts involving substantial client contact.

Alan believes that the true reason is not only his age, but his facial appearance.

Advise Alan

(13 marks)

P.T.O.

- (b) Rachael works as a junior manager in Mega Bank plc. She is based at the Middlemarch branch.

She receives a circular letter, sent to a number of managers of her grade, explaining that a number of managerial and back office functions, including those which she carries out, are being amalgamated at one national centre and that this will lead to the closure of a number of small branches, including the Middlemarch branch. She is told, however, that her job will be preserved at the same salary, but that she will be required to take on other duties, including some sales functions, in a larger nearby branch at Exminster, some twenty miles away. She is also told that her job will now involve a flexible working pattern, including some Saturdays.

Rachael is very unhappy with this information because she does not drive and public transport to the Exminster branch is difficult. Moreover, her child care arrangements will be severely disrupted if she has to work anything other than set hours. In addition she is Jewish and does not wish to work on the Sabbath.

Advise Rachael.

(12 marks)
(Total: 25 marks)

2. Each of the individuals below have indicated their intention to apply to an Employment Tribunal. Advise Amalgamated plc their employer.

- (a) Brian has worked for the company for five years. He has recently been convicted at Middlemarch Magistrates Court of an offence of indecent exposure committed at a local swimming pool, the victim being a teenage girl. He received a non-custodial sentence, but the case was given a good deal of publicity in the local paper. The women in his section now refuse to work with him and have walked out on one occasion, severely disrupting the shift and production. Brian's work is essentially unskilled and given the size of the company it would be possible, if they wished to do so, to re-train and move Brian. The Personnel Manager, however, indicates that he is unwilling to do this and that as "Brian has brought things on his own head", he must be dismissed.

(8 marks)

AND

- (b) Claire, a middle manager, has recently taken maternity leave (her third within five years). She has indicated her intention to return to work, but has asked the company to let her undertake a job share, working three days per week. The company is unwilling to accommodate this request because it insists that management functions cannot be shared in this way because of the need for continuity in the working week, and that anyway there is no other person of equivalent grade who is willing to undertake a job share.

(8 marks)

AND

- (c) Donald has recently been dismissed after being suspected of theft of some tools from the company workshop. The manager who dismissed him did not observe the company's disciplinary procedure because he considered that Donald had been caught red handed and there could be no possible defence. Donald had received two previous written warnings three years and four years before, though neither involved dishonesty. Donald was allowed to appeal, but at the appeal hearing the manager who originally dismissed him sat with the panel, although he did not form any part of the decision making process. Donald was allowed to state his side of the case, but was not allowed to question the two eye witnesses to the alleged theft. The panel upheld the original decision and indicated that cross examination would not be allowed because "this is not a Crown Court trial you know".

(9 marks)
(Total: 25 marks)
P.T.O.

3. Frank had been employed as manager of Middlemarch Albion, a Championship football team, since November 2005. He had a fixed term contract of five years with no break clause. Under the contract he received a salary of £120,000 per annum, together with a ten percent share of any profits of Middlemarch Albion plc in the transfer market, a company car and a substantial pension.

Last week Frank was dismissed without notice by the Chairman, the explanation being that the club had been eliminated from a cup competition in the first round and had lost four of the last five games. Frank has since received an offer of employment as chief scout for Exminster Rovers on a much reduced salary. There is also some possibility that he may obtain employment as a radio commentator.

Advise Frank:-

- (a) Of any appropriate action he may take against Middlemarch Albion plc.
(5 marks)

AND

- (b) The principles on which any damages to which he may be entitled would be assessed.

(10 marks)

AND

- (c) Whether there is any possibility of him obtaining an injunction to prevent dismissal taking effect. Frank contends that his managership has been relatively successful and that the reason for the club's poor performance recently has been the Chairman's refusal to make substantial funds available for Frank to buy in the transfer market, as the Chairman had promised some months before.

(5 marks)

AND

- (d) Would it make any difference to any part of your answer if it were subsequently found by Middlemarch Albion that Frank had made inflated expenses claims and misused corporate facilities?

(5 marks)

(Total: 25 marks)

4. Galaxy Intercontinental plc is a large company with premises throughout the United Kingdom.

- (a) Without any prior consultation, the company indicates that 12 of its 40 lorry drivers are to be made redundant because a number of lorries are now in need of replacement. The company has decided, as a matter of policy, to outsource some of its haulage work to private contractors, and to transfer other long distance deliveries to rail. All 40 drivers are sent a letter by the company in which they are told that:-

"Selection for redundancy will be done with all proper fairness. It is against the law to adopt a "last in first out policy". There will be individual appraisals conducted confidentially by management. There will be no formal hearings or appeals from the decisions taken."

- (i) Five of the drivers affected consult you for advice and ask whether it is right that there can be a redundancy situation given that there has been no diminution in the need for transport, but simply a management decision to outsource the work or transfer it to rail.

(10 marks)

P.T.O.

- (ii) Indicate what the effect is, if any, of the company failing to undertake consultation in any respect.

(5 marks)

AND

- (b) James is badly affected by noise levels in the plant where he works. He has worked for the company for seven years and previously worked for Vehicles Inc. in a similar job for eight years. He is now suffering very severe hearing loss. The company explains that because his work is basically unskilled, it is unable to accommodate him anywhere else and indicates that he will have to leave or be dismissed because it is unsafe for a worker with hearing problems to work in the busy factory environment and the company has neither the funds nor the inclination to make special arrangements for him.

Advise James as to his legal rights.

(10 marks)

(Total: 25 marks)

SECTION B

5. Explain the scope and enforceability of any **TWO** of the following express contractual provisions.

(i) "No strike" clauses.

(ii) A "garden leave" provision.

(iii) Post termination confidentiality clauses.

(25 marks)

6. Critically consider the effect on UK law of European case law in the fields of equal pay and sex discrimination.

(25 marks)

7. In the field of Health and Safety explain:-

- (a) The recent approach of the courts to the problems of illness caused by long hours and stress at work.

(15 marks)

AND

- (b) The Management of Health and Safety at Work Regulations 1992 (as amended).

(10 marks)

(Total: 25 marks)

8. "Where an employment tribunal is considering issues of causation in the context of a compensatory award, a very broad test should be applied, by assessing what is just and equitable having regard to the claimant's loss so far as that loss is attributable to the employer. It is inappropriate to introduce principles of foreseeability or remoteness in the technical sense..."

Lord Johnstone in *Balmoral Group Limited v Rae* (2000).

Critically consider the way in which employment tribunals approach compensation in cases where they find an employee has been unfairly dismissed.

(25 marks)