

INSTITUTE OF LEGAL EXECUTIVES

UNIT 6 - EMPLOYMENT LAW*

Time allowed: 1 hour and 30 minutes plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **The question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios in Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 3 CERTIFICATE IN LAW AND PRACTICE** and **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

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SECTION A

(Answer ALL questions in Section A)

1. Explain the integration test and give an example of how it works.
(2 marks)
2. List **three** common law duties an employer may have to employees.
(3 marks)
3. Fran works full-time as a cleaner. Briefly explain to Fran how many days holiday she is entitled to each year.
(2 marks)
4. Seth has been offered a new job as a sales manager. He has been given a contract of employment to sign. There is a section headed 'Restrictive Covenants' but he does not know what it means.

Explain to Seth the nature and purpose of a restrictive covenant.
(5 marks)
5. Where is a discrimination claim heard?
(1 mark)
6. Farhana is 18 years old and works part-time as a waitress at a large fast food chain. She is paid £3.00 per hour. Advise Farhana whether by law she should be paid more and what her legal options are.
(5 marks)
7. Wynn has made a complaint at work about being taunted for being Welsh. He has been there three months. His boss laughed and said he should ignore it and stop making a fuss. Wynn continues to complain and has been dismissed for being a troublemaker. What potential claims does Wynn have?
(5 marks)
8. Last month, Chris employed Emily. However, things are not going well. Chris has now received references from Emily's last employer which say she was a terrible employee. Explain if Chris can lawfully dismiss Emily.
(5 marks)
9. Lizzy is dismissed following an allegation of theft from her employer. She has worked there for six years. What, if any, notice period is she entitled to and why?
(2 marks)

(Total Marks for Section A: 30 marks)

SECTION B

(There are three scenarios in Section B. Answer the questions related to
ONE of the scenarios ONLY)

Scenario 1

Dave runs a small local charity to preserve the wildlife in Kempston. About a year ago he employed Fiona as a paid trainee.

Fiona is doing very well and has encouraged lots of local businesses to donate money to the charity. However, last week Dave received a complaint from a local farmer who said Fiona had been very rude when he refused to donate to the charity. Dave spoke to Fiona about the incident and she swore at him and said she 'is very good at her job and has made more money for the charity than anyone else has in the last 10 years'. Dave is unsure as to what action he can take if he wants to discipline Fiona.

Dave is also a little unhappy about another employee, Kevin, who does the secretarial work for the charity. Kevin has requested additional holidays as he says 15 days a year is not enough. Kevin has also said he is entitled to contractual documentation which Dave has not provided, even though Kevin has been working there for two years. Dave needs to save money for the charity and is worried that if he increases everyone's holidays and starts paying lawyers to draft contracts of employment, he may have to make someone redundant to cover these costs.

Dave is considering whether he can merge the charity with another local wildlife charity to ensure their work continues. If the merger went ahead, Dave is not sure what would happen to the staff working for the charity.

Dave has discovered that a former employee has made a claim of direct religious discrimination against the charity, but he does not understand what this means.

Scenario 1 Questions

1. Explain the process Dave should follow if he decides to discipline Fiona for swearing at him.
(8 marks)

2. (a) Explain whether Dave could dismiss Fiona before the merger with the other wildlife charity happens.
(10 marks)

(b) If Dave dismisses Fiona explain what notice pay she is entitled to.
(2 marks)

3. Explain whether Dave has to give the staff more holidays and what he should do now.
(5 marks)

4. Advise Dave on what contractual documentation Kevin is entitled to and if he does not provide it, what action Kevin may take.
(7 marks)

5. Explain to Dave what a claim of direct religious discrimination means and what he must do to defend it.
(8 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Roberto runs an Italian restaurant in central Birmingham. The restaurant is famous and is renowned for its excellent food. Roberto is very proud of his restaurant and he is present at every mealtime to make sure the standards never slip. All his staff have been with Roberto since he started the restaurant 10 years ago.

Last week, Roberto observed a waiter, Frank, accepting an envelope from a customer. The envelope was very full and Roberto saw that it contained several £50 notes. Roberto watched Frank take the envelope to the kitchen and share the money with a chef called Giuseppe. Roberto believes that his secret recipes have been leaked to another local restaurant. He has found out that some of his regular customers have been dining at his competitor's restaurant.

Roberto has also noticed that Giuseppe has been coming in late for work. Roberto has given him an informal verbal warning but did not want to anger Giuseppe as he is an excellent chef and is known to start throwing knives around the kitchen if he is angered. Giuseppe has never hurt anyone, but Roberto would rather not take the risk. If Giuseppe has been selling his recipes then Roberto does not want to confront him alone.

Roberto's youngest sister Maria also works at the restaurant and he has noticed that another employee, Anton, keeps pestering her to go out on a date with him. Roberto likes Anton so is quite happy about this. Maria is quite shy and although she is very good at her job she has started making mistakes whenever Anton is around. Roberto has told Maria that her job performance needs to improve.

Maria has complained to Roberto that Anton keeps messaging her on Facebook and commenting on her photos. She recently put some photos of herself on Facebook. In the photos she and her friends were on a beach holiday. Anton said he wished he had been there 'to rub the sun cream in!' She feels very uncomfortable about Anton's attention and dreads coming into work.

Scenario 2 Questions

1. Identify and explain the express and implied terms in Giuseppe's contract of employment that he may have breached by passing recipes to a competitor.

(5 marks)

2. Explain what procedural steps Roberto should take to investigate his suspicions concerning the leaking of the recipes by Frank and Giuseppe.

(5 marks)

3. Roberto decides to discipline Giuseppe.

- (a) Explain whether Roberto may fairly dismiss Giuseppe and the legal factors which may affect this.

(10 marks)

- (b) Explain what notice period, if any, Giuseppe is entitled to.

(5 marks)

(Total: 15 marks)

4. Explain whether Giuseppe meets the eligibility criteria for a claim of unfair dismissal.

(5 marks)

5. Roberto continues to ignore Anton pestering Maria. What action can Maria take against Roberto as her employer?

(10 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

A small manufacturing company, Eagle Electrics, 'The Company', has decided to review its staffing following the loss of a large client. The management team is worried that the Company may not survive for very long without severe staff cuts.

They have 24 cleaners on their books as casual staff. All the casual staff responded to an advertisement for casual cleaners to work 'as and when required'. Each successful applicant had to sign the statement below:

I agree to undertake work as a casual cleaner on an 'as and when required' basis. I accept that I am not an employee and will have to pay my own tax and National Insurance.

When they started work they were given an induction into the Company and a training session on health and safety within the factory.

Originally, they were only needed for four hours a week as the factory was very small and they only cleaned the office area. Now that the factory and office areas have expanded significantly, some of them are working 25 hours per week.

Although the cleaners have to be available to the Company when they need them, they are not paid for holidays and absences for sickness. On a few occasions some of the cleaners have refused to work when required. Two cleaners have refused to work three times in the last week. The Company has never used the disciplinary procedure with any of the cleaners and neither have the cleaners used the grievance procedure for any reason.

The Company provides all the cleaners with uniforms. They are paid an hourly rate of £5.90 per hour.

Due to lack of money the Company has decided it no longer needs the services of 10 of the cleaners. The management team have identified a group who are all recently married women who they believe are likely to start having children shortly. They want to ensure they are within the 10 who are dismissed but are concerned this may cause problems.

Scenario 3 Questions

1. In relation to the employment status of the cleaners:
 - (a) Explain what factors indicate the cleaners are employees of the Company and what legal tests apply.
(5 marks)
 - (b) Explain what factors indicate the cleaners are self-employed contractors and what legal tests apply.
(8 marks)**(Total: 13 marks)**

 2. If the Company decides to reduce the number of cleaners, explain whether it has a potentially fair reason to dismiss them and how it may be justified.
(5 marks)

 3. (a) The group of recently married cleaners who were dismissed want to pursue a claim against the Company; on what basis might they do so?
(9 marks)

(b) Within what time limit must they pursue any claims identified in question 3(a) above?
(5 marks)
(Total: 14 marks)

 4. What remedies might be available to the recently married cleaners if they were successful in their claim(s)?
(8 marks)
- (Total Marks for Scenario 3: 40 marks)**

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