

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 and give **one** example of the Control Test. **(3 marks)**
2. List **two** protected characteristics contained in the Equality Act 2010. **(2 marks)**
3. Identify **two** potentially fair reasons for dismissal contained in the Employment Rights Act 1996. **(2 marks)**
4. Identify any monetary limits which may apply when bringing a claim for wrongful dismissal. **(3 marks)**
5. Identify and explain **two** implied duties which an employee may owe to their employer. **(4 marks)**
6. What is a garden leave clause? Why should an employer include one in the employment contracts of senior employees? **(5 marks)**
7. Reece has worked for 'Polka Tots Daywear' as a cleaning supervisor for 15 years. If he is dismissed, explain what notice period Reece is entitled to. **(3 marks)**
8. Explain why an employment contract may contain different dates for 'the date of commencement of employment' and 'the date of continuous employment'. **(3 marks)**
9. Cassie had worked as a sales executive for six years until last Monday. She asked her boss to leave an hour early as she had an important personal appointment. He became angry and threw his mug of coffee across the room, narrowly missing Cassie. She walked out.
Explain whether Cassie can bring a claim for unfair dismissal. **(5 marks)**

(Total Marks for Section A: 30 marks)

SECTION B

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

Scenario 1

Alan runs a small printing business in Kempston called 'Printz'. He has recently had a chat with a friend at the golf club who told him he ought to have 'proper paperwork' for his staff. Alan has avoided using documentation and has preferred to speak to people. He trusts his staff and believes that he treats them well and doesn't see the need for unnecessary paperwork. He has never had an unhappy member of staff so does not see the point in wasting money on paperwork.

Alan has three permanent employees and six people that he calls the 'casuals'. The casuals are paid cash in hand at the end of every day. He has used two of the casuals since he started the business 12 years ago. If Alan needs them to work he rings them and they come in. They are free to work for other people but he expects them to always be available when he needs them. He pays them £3.50 per hour. They have to wear Printz company overalls when working. Alan has given them basic health and safety training. The 'casuals' were invited to the Christmas party last year with the rest of the staff.

One of Alan's permanent employees, Kelvin, has said to Alan that he is unhappy about his hours of work. Alan told him he was lucky to have a job and should not complain. Kelvin has now written a formal letter to Alan entitled 'grievance' in which he states that he 'is no longer willing to work 14 hour days and 12 days without a day off.'

Alan has recruited a new designer, Helena, for a range of t-shirts which Printz are going to sell. He is considering whether he should have a contract of employment drawn up for her as he realises that designers can sometimes be temperamental.

Scenario 1 Questions

1. Alan's friend has suggested to him that his 'casuals' are actually employees.
In relation to the employment status of the 'casuals':
 - (a) explain what factors indicate the 'casuals' might be employees of the company and what legal test(s) apply.
(7 marks)
 - (b) explain what factors indicate the 'casuals' might be self-employed contractors and what legal test(s) apply.
(8 marks)**(Total: 15 marks)**

2. Advise Alan what 'proper paperwork' he must provide to all his employees and within what timescale.
(5 marks)

3. Advise Alan on the procedure he should follow when dealing with Kelvin's written complaint and the potential claim(s) Kelvin may have if Alan doesn't.
(10 marks)

4. Identify and explain in detail **two** types of clause which Alan should consider including in any contract for his new designer.
(10 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Ashraf works as an Account Manager at a window supply company, 'Wonderful Windows'. Recently the position of Supervisor of the Account Managers was advertised, and Ashraf applied for it. Ashraf had been temporarily covering the job because the Supervisor, Steve, had been off sick. Steve decided not to return to work. Ashraf was told by Steve to apply for the job as he is 'the best Account Manager they have' and would be 'an obvious choice' for Supervisor as he had been doing the job so well in Steve's absence.

Ashraf applied for the job feeling confident that he would at least be interviewed. However, he was not interviewed and one of his more junior colleagues was given the job. Ashraf is very upset about this. When he asked why he had not been interviewed, he was told that he didn't really fit in to the company's image and didn't have the skills they were looking for.

Earlier this year, Ashraf entered into a civil partnership with his long term partner, Frank. He had a huge party and invited everyone from work, but only three of his colleagues attended, and no senior managers attended. Ashraf feels that he is not liked by senior management because he is gay. Frank has suggested to Ashraf that it was his sexuality which stopped him from getting the promotion. Ashraf is very upset about this and wants to do something about not getting the promotion. He does not want to leave and claim unfair dismissal at this time.

Another employee, Sarah, suffers from depression. Following the death of her mother, Sarah had two weeks off. She cannot face returning to work on a full-time basis. She has requested a phased return to work, two days a week, then three days, until she is up to a five day week. The managing director of Wonderful Windows has refused her suggestion of a phased return to work.

Scenario 2 Questions

1. Ashraf does not want to consider an unfair dismissal claim at the time of his dismissal. Identify and explain what other claim Ashraf may have against his employer and how it arises.

(10 marks)

2. Explain in detail how the burden of proof will work in Ashraf's case and whether he can discharge the burden.

(6 marks)

3. What remedies might be appropriate for Ashraf if he is successful in his claim?

(5 marks)

4. Explain whether Sarah is disabled within the meaning of the Equality Act 2010.

(8 marks)

5. Identify and explain;

(a) what claim(s) Sarah may have against her employer.

(5 marks)

(b) what remedies might be appropriate for Sarah if she is successful in her claim(s).

(6 marks)

(Total: 11 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Polly runs a 'boutique hotel' in a seaside resort in Cornwall. She has a number of employees working for her. Polly is experiencing problems with three employees.

Two of these, Kate and Ben, are younger members of staff, who have worked there for two years. Recently, she has found their attitude towards work very difficult. Ben is always turning up late or leaving early whilst Kate covers for him.

Last night, Ben was meant to be on duty but when Polly went to look for him, she was told by a guest that he had seen Ben walking out with his surf board five minutes earlier. Kate overheard the comment from the guest and called him a liar. She said Ben was still working. Polly carried on looking for Ben but she could not find him anywhere in the hotel. The guest was very annoyed at Kate's comment. He decided to leave the hotel early and demanded a refund for the rest of his stay.

Polly has decided to hold a meeting with Ben and Kate but is unsure how she should deal with the situation as she has never had staffing problems before. She is also unsure about what, if any, disciplinary sanctions she should impose.

The third employee Polly is having difficulty with is Trevor, the Head Waiter. This morning she discovered that Trevor wishes to leave. Trevor has worked for Polly for ten years. His contract of employment states he must give three months notice. Trevor has asked to leave in ten weeks time.

Scenario 3 Questions

1. Explain the procedure that Polly should follow if she decides to dismiss Kate and Ben.

(10 marks)

2. Advise Polly whether Ben and Kate satisfy the eligibility criteria for a claim for unfair dismissal.

(7 marks)

3. Advise Polly whether she could successfully defend;
 - (a) a claim for unfair dismissal by Ben.

(9 marks)

 - (b) a claim for unfair dismissal by Kate.

(9 marks)

(Total: 18 marks)

4. Advise Polly whether she has to accept Trevor's request to leave in ten weeks time and/or whether she can choose to pay him instead.

(5 marks)

(Total Marks for Scenario 3: 40 marks)

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