

CASE STUDY MATERIALS

June 2012
Level 3
PRACTICE OF EMPLOYMENT LAW
Subject Code L3-13



INSTITUTE OF LEGAL EXECUTIVES
UNIT 13 – PRACTICE OF EMPLOYMENT LAW*
CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the Instructions to Candidates: Examination Regulations.

Turn over

* 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**

ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee Legal Executive in the firm of Kempstons, The Manor House, Bedford, MK42 7AB. The firm is a busy high street practice with a successful employment department. The department has a new client, Master Fit Flooring, who promise to be a great source of work for the firm. You are asked to familiarise yourself with the documentation provided in advance of your meeting with the client.

Your firm also runs a successful advice clinic each week at which new clients receive some basic legal advice for free in the hope that the firm will be instructed for future work.

Your supervising Legal Executive is David Ross, a partner in the firm. He has left a note of the new clients you will be seeing in the advice clinic this week, together with a memorandum concerning Master Fit Flooring.

- Document 1** Memorandum from David Ross re new client, Master Fit Flooring.

- Document 2** Email from Master Fit Flooring.

- Document 3** Draft job advertisement from Master Fit Flooring.

- Document 4** Contract of employment for Alan Blurton.

- Document 5** Memorandum from A Jones (David Ross' secretary) re advice clinic.



DOCUMENT 1

MEMORANDUM

To: Trainee Legal Executive
From: David Ross
Date: [Yesterday]
Re: **New Client - Master Fit Flooring**

I would be grateful if you would consider the documentation attached (**Documents 2 and 3**) and let me have your thoughts in advance of the meeting.

Master Fit Flooring is a new small business run by two brothers who have been fitting high quality wooden flooring to houses in the Kempston area. They are so successful that they now need to recruit more fitters.

I have spoken to one of the brothers, Rob, who is concerned about their potential liabilities to employees if they expand and what documentation they will need to put in place. Rob describes himself as 'quite bright but rubbish at school' and has a fear of paperwork.

There is the potential to provide the firm with all sorts of employment services but we will need to explain things carefully and justify why they need to spend the money at a time when their cash flow is difficult.

Rob has sent us a draft advert he has written for the local newspaper and is coming in for an initial meeting next week to discuss this. I think this may be a good client for you to start with and build on for the future. I think he sees me as a bit too old and out of touch!

Many thanks

David

DOCUMENT 2
EMAIL FROM ROB



Hi David

Subject: Legal Advice

I still don't really understand why you think we need all these documents if we just need two new fitters. I don't think me and my brother were ever given any kind of documents when we were working for other companies. Do you think it is really necessary?

I am a bit worried about costs so we would prefer to see your trainee if they are cheaper than you.

I have attached my draft advert for you both to have a quick look at (**Document 3**). I haven't done one before so would appreciate your advice before I send it into the paper.

Thanks mate

Rob

Master Fit Flooring

DOCUMENT 3

JOB ADVERTISEMENT

Master Fit Flooring

Good hard workers sought for new flooring business.
We seek experienced fit young men with good references to
join us in expanding our new business.

Will pay going rate depending on experience and references.
Ring Rob on: 01234 11222

EXTRACT FROM THE CONTRACT OF EMPLOYMENT FOR ALAN BLURTON

THIS AGREEMENT is dated 2nd July 2011

PARTIES

- (1) Wokes Ltd, incorporated and registered in England and Wales with company number 123456 whose registered office is at 455A Littleton Street, Kempston, Bedford, MK41 1AA (**Company**).
- (2) Alan Blurton of 23 Cherry Tree Grove, Kempston, Bedford (**Employee**).

AGREED TERMS**1. Interpretation**

The definitions and rules of interpretation in this clause 1 apply in this agreement.

Appointment: the employment of the Employee by the Company on the terms of this agreement.

Commencement Date: 2 July 2011

Confidential Information: information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Company for the time being confidential to the Company and trade secrets including, without limitation, technical data and know-how relating to the business of the Company or any of its business contacts.

Staff Handbook: the Company's staff handbook as amended from time to time.

2. Term of appointment

The Appointment shall commence on the Commencement Date and shall continue, subject to the remaining terms of this agreement, until terminated by either party giving the other not less than 6 months' prior notice in writing.

3. Duties

3.1. The Employee shall serve the Company as an electrical engineer or such other role as the Company considers appropriate.

3.2. During the Appointment the Employee shall:

- (a) unless prevented by Incapacity, devote the whole of his time, attention and abilities to the business of the Company;
- (b) diligently exercise such powers and perform such duties as may from time to time be assigned to him by the Company;
- (c) comply with all reasonable and lawful directions given to him by the Company.

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- (d) use his best endeavours to promote, protect, develop and extend the business of the Company; and
- (e) consent to the Company monitoring and recording any use that he makes of the Company's electronic communications systems for the purpose of ensuring that the Company's rules are being complied with and for legitimate business purposes.

4. Place of work

The Employee's normal place of work is Kempston, Bedford or such other place within 50 miles which the Company may reasonably require for the proper performance and exercise of his duties.

5. Hours of work

The Employee's normal working hours shall be 8am to 6pm on Mondays to Fridays and such additional hours as are necessary for the proper performance of his duties. The Employee acknowledges that he shall not receive further remuneration in respect of such additional hours.

6. Salary

- 6.1. The Employee shall be paid an initial salary of £35,000 per annum
- 6.2. The Employee's salary shall accrue from day to day and be payable monthly in arrears on or about the 25th day of each month directly into the Employee's bank or building society.
- 6.3. The Company may deduct from the salary, or any other sums owed to the Employee, any money owed to the Company by the Employee.

7. Holidays

- 7.1. The Employee shall be entitled to 20 days' paid holiday in each holiday year together with the usual public holidays in England or days in lieu where the Company requires the Employee to work on a public holiday. The Company's holiday year runs between 1st January and 31st December. If the Appointment commences or terminates part way through a holiday year, the Employee's entitlement during that holiday year shall be calculated on a pro-rata basis rounded up to the nearest half day.
- 7.2. Holiday shall be taken at such time or times as shall be approved in advance by your line manager. The Employee shall not carry forward any accrued but untaken holiday entitlement to a subsequent holiday year unless the Employee has been unavoidably prevented from taking such holiday during the relevant leave year because of sickness absence or statutory maternity, paternity or adoption leave.

- 7.3. The Employee shall have no entitlement to any payment in lieu of accrued but untaken holiday except on termination of the Appointment.
- 7.4. If on termination of the Appointment the Employee has taken in excess of his accrued holiday entitlement, the Company shall be entitled to recover from the Employee by way of deduction from any payments due to the Employee or otherwise one day's pay for each excess day.

8. Confidential information

- 8.1. The Employee acknowledges that in the course of the Appointment he will have access to Confidential Information. The Employee has therefore agreed to accept the restrictions in this clause 8.
- 8.2. The Employee shall not (except in the proper course of his duties), either during the Appointment or at any time after its termination (however arising), use or disclose to any person, company or other organisation whatsoever (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This shall not apply to:
 - 8.3. any use or disclosure authorised by the Board or required by law;
 - 8.4. any information which is already in, or comes into, the public domain other than through the Employee's unauthorised disclosure; or
 - 8.5. any protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.

9. Payment in lieu of notice

- 9.1. Notwithstanding clause 2, the Company may, in its sole and absolute discretion, terminate the Appointment at any time and with immediate effect by paying a sum in lieu of notice (**Payment in Lieu**) equal to the basic salary (as at the date of termination) which the Employee would have been entitled to receive under this agreement during the notice period referred to at clause 2 (or, if notice has already been given, during the remainder of the notice period) less income tax and National Insurance contributions.
- 9.2. The Company may pay any sums due under clause 9.1 in equal monthly instalments until the date on which the notice period referred to at clause 2 would have expired if notice had been given.

10. Termination without notice

- 10.1. The Company may also terminate the Appointment with immediate effect without notice and with no liability to make any further payment to the Employee (other than in respect of amounts accrued due at the date of termination) if the Employee:

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- 10.2. is guilty of any gross misconduct affecting the business Company;
- 10.3. commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Company;
- 10.4. is, in the reasonable opinion of the Board, negligent and incompetent in the performance of his duties;
- 10.5. is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
- 10.6. is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- 10.7. becomes of unsound mind (which includes lacking capacity under the Mental Capacity Act 2005), or a patient under any statute relating to mental health;
- 10.8. ceases to be eligible to work in the United Kingdom;
- 10.9. is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Company brings or is likely to bring the Employee or the Company into disrepute or is materially adverse to the interests of the Company;
- 10.10. is guilty of a serious breach of any rules issued by the Company from time to time regarding its electronic communications systems.

11. Obligations on termination

On termination of the Appointment (however arising) the Employee shall:

- (a) Immediately deliver to the Company all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Company or its business contacts, any keys, and any other property of the Company including any car provided to the Employee, which is in his possession or under his control;
- (b) irretrievably delete any information relating to the business of the Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the Company's premises.

12. Disciplinary and grievance procedures

- 12.1. The Employee is subject to the Company's disciplinary and grievance procedures, copies of which are available from the HR Director. These procedures do not form part of the Employee's contract of employment.

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- 12.2. If the Employee wants to raise a grievance, he may apply in writing Ball in accordance with the Company's grievance procedure.
- 12.3. If the Employee wishes to appeal against a disciplinary decision he may apply in writing to the Director of Personnel in accordance with the Company's disciplinary procedure.
- 12.4. The Company may suspend the Employee from any or all of his duties for a period of up to 14 days during any period in which the Company is investigating any disciplinary matter involving the Employee or while any disciplinary procedure against the Employee is outstanding.

This agreement has been entered into on the date stated at the beginning of it.

Signed by Jacob Carswell
for and on behalf of Wokes Ltd

J Carswell
Director

Signed by Alan Blurton

A B Blurton

MEMORANDUM

To: Trainee Legal Executive
From: A Jones
Date: [Today]
Re: **Advice Clinic**

I understand from David that you are running this week's advice clinic.

We have only had two enquiries so far but they are usually booked in at the last minute, so you may be busy! David suggested you may need some preliminary details to help you consider what issues may arise when you see them.

The clients so far for this week's advice clinic are as follows:

1. Eisha Khan - 4.30pm

Eisha was employed as a receptionist at a firm of insolvency practitioners in Bedford called 'ZZR'. She worked there from January 2007 until yesterday. Yesterday afternoon she was dismissed. Her boss, Kevin, summoned her to his office and showed her a photograph on a social networking site which showed two women mooning outside the firm's offices. Eisha had been tagged on the photograph by a friend.

Eisha denies that it was her as she does not own a pair of pink jeans which both the women were wearing. Kevin said if that was what she thought of her job then she was not wanted anymore. He refused to listen to her explanations and told her to pack her belongings and leave within 15 minutes, which she did. He also told her she would not be receiving any notice pay as it was gross misconduct. Eisha is very upset.

2. Sam Gibbons - 5pm

Sam has worked as a driver for a taxi company since April 2009, earning £500 per week. Last month, she discovered that she is pregnant with twins. Last week, she informed her boss, Jane, who was very angry and asked how she was going to cover Sam's maternity leave. Sam covers a lot of shifts when other drivers are on holiday and so she knew Jane would not be very happy at her taking any time off.

This morning, Sam was informed that the taxi company was being re-organised and that a new shift system was being introduced. Jane told her that there was a requirement for less staff and as a result she would be made redundant the next week. Jane told her it was 'probably for the best', as she would not be able to work much longer as she 'wouldn't fit behind the steering wheel if she was having twins'. Sam is very worried about finding another job.

I will let you know when anyone else books in.

A Jones

End of Case Study Materials

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