



THE CHARTERED 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 CILEX 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 CILEX 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. Identify and explain **two** implied duties which employers owe to their employees.

(4 marks)
2. Alex is a 30 year old waitress and is concerned she is not being paid the correct hourly rate. How much is the minimum wage for a 30 year old waitress?

(1 mark)
3. Explain the elements required to satisfy the statutory definition of disability discrimination and identify relevant cases.

(4 marks)
4. Explain the purpose and effect of a garden leave clause in a contract of employment of a senior executive.

(5 marks)
5. Derek worked for the same employer for 15 years until he was dismissed earlier this week. Explain how much statutory notice Derek is entitled to.

(3 marks)
6. Identify **two** elements of the control test.

(2 marks)
7. List the potentially fair reasons for dismissal.

(5 marks)
8. Eric started work six months ago and has not received any documentation from his employer. What documentation should he have received and when?

(3 marks)
9. Carla wishes to claim wrongful dismissal. She is owed two weeks pay amounting to £680. What are the options for her regarding where she should issue her claim and why?

(3 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

Rick employs 30 staff at his haulage firm, 'Big Road Truckers'. Recently, he has been experiencing some problems with two of his staff, Davina and Mike. Mike is a lorry driver who has worked for Rick for eight years. Davina has worked for Rick for 18 months.

On Tuesday, Rick received a complaint from a customer that three boxes were missing from a delivery made the day before. The boxes contained expensive sheepskin designer boots. Rick double checked his records and found that it was definitely Mike who had made that delivery.

Rick asked Mike about the delivery. Mike was unable to account for what had happened to the boxes and said that he had 'no idea' how they went missing. A total of 52 boxes had been loaded onto the lorry and only 49 were delivered. Mike had recently been complaining about having no money after Christmas. However, when they all went to the pub after work on Tuesday night, Rick saw that Mike had a lot of money in his wallet.

On Wednesday morning, Rick asked Mike where the money had come from but Mike refused to answer. Rick then dismissed Mike as he believed he had stolen the three missing boxes of sheepskin designer boots.

Rick suspects that Davina is setting up her own haulage firm. She has asked Rick a number of questions about his business. Rick was told by his former solicitors that the 'duty of fidelity' would prevent Davina from stealing his customers. Rick's solicitors drafted contracts of employment for his employees which included the following clause:

'Within 12 months of the termination (howsoever arising) of the Employee's employment, the Employee shall not approach or deal with any customer of the Employer's with whom the Employer has conducted business within a 6 month period.'

Scenario 1 Questions

1. (a) Explain to Rick if Mike meets the eligibility criteria for a claim of unfair dismissal against 'Big Road Truckers'.

(8 marks)

- (b) Where would Mick issue his claim and what is the time limit for him to issue a claim?

(2 marks)

(Total: 10 marks)

2. Explain on what basis Rick may defend an unfair dismissal claim brought by Mike.

(10 marks)

3. Rick has discovered a list of the names and telephone numbers of his clients in Davina's bag during a routine bag search. Davina refused to explain why she had the list.

- (a) Explain whether Rick may fairly dismiss Davina.

(7 marks)

- (b) Briefly explain what, if any, notice period is Davina entitled to?

(3 marks)

(Total: 10 marks)

4. Explain whether Davina is bound by the restrictive covenant in her contract of employment and what action Rick may take if Davina sets up a business in competition with 'Big Road Truckers'.

(10 marks)

(Total Marks for Scenario 1: 40 marks)

Scenario 2

Sarah works as a waitress at a small café in the park called 'Cupcakes'. She is married in September and has now discovered that she is pregnant. She is due to give birth in June but is worried about telling her employer as she only started working at the café in June last year. Sarah's boss, Iain has previously complained about her predecessor leaving to have a baby. When he interviewed her, he asked Sarah if she intended to have a family. Sarah is worried that he will dismiss her when he finds out that she is pregnant.

Sarah's friend Abdul has recently started working as a waiter at the café. Abdul is concerned about the comments made to him by Nathan, a regular customer. Abdul has noticed that Nathan stares at him and mutters comments when he serves him, but often he cannot hear exactly what Nathan is saying. Abdul has told Iain that he feels uncomfortable but Iain has told him to ignore Nathan. Last week, Abdul heard Nathan refer to him in racist language when talking to Iain. Iain could see that Abdul was very upset.

Yesterday, when Nathan came into the café, Iain insisted Abdul served him. Nathan said in a loud voice that he 'wasn't being served by anyone who isn't English'. Abdul ran out of the café in distress and only returned when Nathan had left. On his return, Iain was very angry and said he had been left to look after all the customers and Abdul needed to 'develop a thicker skin' and ignore Nathan. If he was not willing to do so, he did not have a future at 'Cupcakes'.

Abdul enjoys his job at 'Cupcakes' and does not want to leave. Abdul does not think it is right that Iain allows Nathan to talk to him in the way he does as it is making him dread going into work.

Scenario 2 Questions

1. Advise Sarah whether she has a claim for unfair dismissal if Iain dismissed her when he finds out she is pregnant.

(6 marks)

2. (a) Explain what alternative claim Sarah may have against Iain if she is dismissed due to her pregnancy.

(10 marks)

- (b) Explain what remedies would be available to Sarah if she is successful in her alternative claim.

(7 marks)

(Total: 17 marks)

3. (a) Identify and explain the type of claim Abdul may be able to bring against Iain regarding Nathan's behaviour.

(10 marks)

- (b) Explain how the burden of proof works in Abdul's case.

(7 marks)

(Total: 17 marks)

(Total Marks for Scenario 2: 40 marks)

Scenario 3

Elena works as a sales representative for a multinational games company. She created a groundbreaking wargame that won numerous awards in 2007. Even today, a gamer has her game for their Z box 280.

Elena travels around the country selling and promoting new games the company has produced. Elena has beaten every sales target set for her each year for the last six years. However, she has not created any new games. She is paid £52,000 per annum, receives a company car worth £20,000 per annum, a company mobile telephone and gym membership. Her contract includes a three month notice period on either side.

Last week, Elena was told that although she sold a lot of games she was not performing well enough because she had not created any new games. She was told she may be at risk of redundancy. Elena believes that she is being targeted as she was quite vocal at a recent staff meeting and criticised the Sales Director, Tariq. Elena believes that more money should be invested by the company into new technologies to enable the game creators to make the special effects more convincing. She believes that Tariq is receiving personal benefits from placing orders with their current suppliers. She made an anonymous telephone call to the managing director at the end of last year and thinks Tariq suspects her of doing so, as Tariq sees Elena as the only dissenting voice in his team.

Elena is worried about being dismissed and whether her personal assistant, Joy, will also lose her job. Joy does not have a contract of employment and only works when needed. Elena provides a mobile telephone for her and contacts her about a week in advance of when she needs her. Joy undertakes secretarial tasks, contacts clients and completes Elena's expenses every month. They have worked together for five years. Joy responds to calls and emails when Elena is on holiday. Joy works from home as Elena is seldom at head office.

Scenario 3 Questions

1. Identify and explain the type of claim Elena may have if she is selected for redundancy by Tariq on the basis of her protected disclosure to the managing director.

(10 marks)

2. Assume that Elena is dismissed without notice. Explain the elements of her claim for wrongful dismissal.

(8 marks)

3. Advise Elena's employer on how they should proceed in relation to the protected disclosure regarding Tariq.

(10 marks)

4. (a) Explain what factors indicate Joy is an employee and the relevant legal tests which apply.

(5 marks)

- (b) Explain what factors indicate Joy is self-employed and the relevant legal tests which apply.

(7 marks)

(Total: 12 marks)

(Total Marks for Scenario 3: 40 marks)

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