

INSTITUTE OF LEGAL EXECUTIVES

UNIT 4 – EMPLOYMENT LAW*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Employment Law 2010-2011, Twentieth Edition, Richard Kidner, Oxford University Press.**
- 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 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

SECTION A
(Answer at least one question from this section)

1. In *Khan v Vignette* Europe UKEAT/0134/09 the Employment Appeal Tribunal stated that an individual's religious views and a right to a fair hearing were not a 'trump card' but an important factor to be weighed in the balance.

Critically consider the impact the European Convention on Human Rights has had on employment law.

(25 marks)

2. A distinction is made between the awards for claims for compensation in unfair dismissal and discrimination claims when it comes to injury to feelings and any damage to the reputation of the individual.

(a) Explain the possible financial awards in unfair dismissal and discrimination claims.

(10 marks)

(b) Compare and contrast such claims for injury to feelings for unfair dismissal and discrimination claims.

(15 marks)

(Total: 25 marks)

3. The Working Time Regulations 1998 continue to be interpreted in a way which is beneficial to employees but not employers.

Critically assess whether this is the case.

(25 marks)

4. Procedural fairness is no longer of any great importance when deciding whether or not an individual has been unfairly dismissed.

To what extent is this statement accurate?

(25 marks)

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SECTION B
(Answer at least one question from this section)

Question 1

Garka Ltd, has for the last 20 years manufactured novelty toys. The business has always prided itself on the relationship it has had with the staff.

Two months ago the business found itself struggling under increasing financial pressures. The problems faced by the company necessitated changes in working practices.

Kate has been employed for the past two years by the company. The company has just changed the shift pattern due to the increasing financial pressures and this will have an affect on Kate's ability to arrange child care. The company says that this is the only way it can remain competitive and in business.

Robert has worked for the company for the last 15 years in the quality control department. He is approaching 60 years of age and the business is looking to make 10 of the employees redundant out of 15 in the quality control department. The appropriate consultation procedure has been adopted. Robert has been given notice of redundancy and he considers that this is due to his age.

Ania is Polish and has been employed for the past seven months by Garka Ltd as an office clerk. Other members of staff, who are UK nationals, resent working with Ania and have made several complaints about her to the management.

Advise Garka Ltd in respect of any potential claims by Kate, Robert and Ania.

(25 marks)

Question 2

The Reginald Tipster Restaurant has a reputation for good food. All the staff are paid in excess of the industry average due to this success.

Laura is the chef in residence at the restaurant and she has discovered that Charlie the head waiter is paid £150 more than her each month.

She has taken this up with the management, who have informed her that she should not complain as she gets a free holiday at the owner's villa in Portugal each year and this was part of the arrangement when she first started working at the restaurant.

Diana is a waitress at the restaurant and she has worked for the business for the last two years on a series of three month fixed term contracts with a couple of weeks off in between.

Last week she was found drunk, in the back storeroom for which she received a warning. Yesterday the manager told her to go and not bother coming back after finding her again intoxicated.

Harry, a barman, has been involved in a car accident. It is expected that he will be off work for the next three months. The management have decided that when he returns he will have to work away from the front of house due to the facial scarring caused by the accident.

(a) Advise Laura as to whether she has a claim to the same salary as Charlie.

(8 marks)

(b) Advise Diana whether she may be successful in a claim for unfair dismissal.

(12 marks)

(c) Are there any claims that Harry could bring against the Restaurant?

(5 marks)

(Total: 25 marks)

Question 3

Jeremy owns and runs a business providing a bin cleaning service. He is the proprietor and has a 'hands on' approach to management making all decisions concerning the business.

Sakina works in the office and has for a number of years provided an excellent service recording bookings. The business is going well and Jeremy has decided that a new computerised system is to be used to speed up the process of taking bookings. The new computerised system will mean that Sakina's role will no longer be required. She has been offered a role as a canvasser but she has declined the role.

Ronnie has worked for the company for the last six years cleaning bins. Recently he has had a series of chest infections which have lasted for up to three weeks at a time. In total he has worked four weeks out of the last six months.

Ronnie has been back at work for the last two weeks and has now gone on sick leave again and is expected to return in three weeks time. Jeremy wishes to dismiss Ronnie and employ another operative.

Alfie has worked for Jeremy for the last six months cleaning bins. He is a single parent with three children under the age of 12 living with him. Last month he had to have four days off due to one of his children being ill. This month he has had to have a further five days off due to another child being ill. Jeremy decides that Alfie's lack of commitment shows that Alfie does not want to work for the business.

Advise Jeremy in respect of any potential claims by Sakina, Ronnie and Alfie.

(25 marks)

Question 4

Entertain U Plc is a national provider of hospitality services based in Kempston. It has a wide portfolio of services which it offers to businesses for corporate events. However the company specialises in evening dinner functions supplying chefs, waiting staff and entertainment.

Robert is the marketing manager for the business and has worked for the company for the last 18 months. Having resigned with immediate effect from his post and after working his notice, he is going to work for a competitor, Pearl Entertainment Inc. Pearl Entertainment Inc. has offices throughout the UK. Robert aims to work for their head office in Milton Keynes, about 18 miles from Kempston where he is currently based.

He has been advised by the company that it intends to enforce a covenant in his contract restricting him from working for six months from the date of termination of his contract within 30 miles of Kempston.

Danielle is a singer who has provided entertainment for functions organised by the company. A written agreement was entered into two years ago, when Danielle started working for the business, that she was self employed and that she was not entitled to holiday or sick pay. The company deducts tax at source and pays for her clothing allowance. The company no longer wishes to use her services and has written to her giving her the contracted one months notice.

Cheng is employed to find new talent for the company. He is employed on a fixed term contract of one year. The contract does not have a break clause. Over the past six months he has been highly successful and in addition to his salary of £50,000 per year, which is paid monthly, earned over £40,000 in commission so far. He also has the use of a company car.

The managing director is having an affair with Cheng's wife and has decided for this reason to bring the contract with Cheng to an end six months early without any compensation.

(a) Advise Robert on the legal implications if he takes up his new post immediately with Pearl Entertainment Inc.

(6 marks)

(b) Advise Danielle whether she is able to qualify to claim unfair dismissal.

(8 marks)

(c) (i) Advise Cheng of any action he could take against Entertain U Plc.

(6 marks)

(ii) How would your answer differ if, after the dismissal had taken place, the managing director discovered that Cheng had been obtaining an introduction fee from each of the performers?

(5 marks)

(Total: 25 marks)

End of Examination Paper

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