

## 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, August 2010**
- 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 PRACTICE**

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

1. The six potentially fair reasons to dismiss under s.98 Employment Rights Act 1996 are interpreted narrowly by Employment Tribunals, providing little in the way of confidence to employers that a dismissal will be classified as fair.

Critically assess the scope of the six potentially fair reasons.

**(25 marks)**

2. Often when a claimant makes a claim to an Employment Tribunal for constructive dismissal they claim for both wrongful dismissal and unfair dismissal.

Compare and contrast claims for unfair dismissal and wrongful dismissal.

**(25 marks)**

3. The Equality Act 2010 will make it much more difficult for employers to avoid their responsibilities to disabled employees.

Critically assess whether this is the case.

**(25 marks)**

4. The enforcement of employment rights developed by the European Court of Justice has significantly enhanced the rights of employees.

Critically assess whether this statement is true in relation to:-

(a) direct effect

**(15 marks)**

(b) indirect effect

**(10 marks)**

**(Total: 25 marks)**

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

**Question 1**

The Earl of Tridington Hotel is owned and run by Roger and Jenny Kensington. The business has been in existence for the last 12 years and they have a number of full time and part time staff working at the hotel, as well as agency staff. There are a number of issues upon which Roger and Jenny seek your advice.

Joan Ward is a chambermaid who works 16 hours per week. All of the contracts issued to chambermaids state that they are self employed. Joan has worked for the last five years in the role, however recently the Hotel has received several complaints about the level of cleanliness in the rooms she has cleaned. After giving her several warnings, Roger and Jenny Kensington want to terminate her contract. All of her wages were paid net of tax.

Ramona Davies has raised the issue of the amount of pay she receives compared with another employee, Conor Johnson. Ramona works at the hotel as the senior manager for the reception area, whereas Conor Johnson is the head chef in the restaurant. She understands that Conor is paid approximately £5,000 per annum more than her and she feels that she should be paid the same.

Jun Chang has worked at the hotel as a porter since it opened. There are presently four porters and the management have taken the decision that they only need three porters to cover the shifts available. Jun Chang has been chosen as the person to be made redundant, despite being the longest serving porter. On the employer's redundancy scoring matrix he scored the least points.

Advise Roger and Jenny Kensington of any employment law liabilities they may face in respect of Joan Ward, Ramona Davies and Jun Chang.

**(Note in relation to Joan Ward consider only her employment status.)**

**(25 marks)**

## Question 2

A number of individuals have sought employment law advice in respect of situations they have encountered while working for the same employer, Committed Legendary Insurance (CLI). CLI run a call centre in Kempston and have been established for the last six years.

Padma Dutta has worked at the call centre for the last two years. Recently her supervisor's behaviour has changed and she has started to feel upset about the way she is being treated. Her supervisor is constantly criticising her and swears at her in front of other members of staff. She feels she can no longer work in these conditions.

Mabel Surtees has recently been offered a new job at a rival business. The offer is subject to her references. CLI have refused to provide her with a reference. The new employer is not prepared to offer her the job without the employer reference. She has already handed in her notice on the expectation she would have a new job.

Arthur Proctor has worked at the call centre for the last five years as a clerk in the accounts department. His monthly wage is £1,200 after tax. He recently made a serious error in one of his calculations which led to a £11,000 loss by the company. According to a written company policy document which Arthur signed last year, all losses must be repaid by the employee.

(a) Advise Padma of any steps she could take against CLI.

**(12 marks)**

(b) Advise Mabel whether she can make CLI provide her with a reference.

**(5 marks)**

(c) Is there any claim that Arthur could bring against CLI if the money were deducted from his salary?

**(8 marks)**

**(Total: 25 marks)**

### Question 3

The Smith Care Home is owned and run by Trust Us Ltd. They have six care homes around the Kempston area and has a good reputation for patient care. Due to the nature of the care provided The Smith Care Home has tried very hard to ensure that there is constant care, with a number of care assistants on its books.

Recently there have been a number of staff leaving and they have not been replaced. Lin Chang, who is 24 years old, has been taken on recently by the company and she has been found to be a hard worker. She is a good worker and she has on average worked 65 hours per week at the care home for the last 14 weeks. She is happy with the pay she receives from the company which is £4.90 per hour but is unhappy that she has been told that she cannot take any holiday until she has worked for the company for six months.

David Frobisher was the manager of the Smith Care Home for five years. He was recently dismissed because he was seen by a care assistant taking valuables from a female resident's bedroom. David Frobisher states categorically that he was taking the jewellery to have it cleaned for her as her children were due to visit her at the weekend and she wanted to look her best. The area manager arrived and dismissed him there and then.

Samuel Kingston has applied for the role of a care assistant at the Home. At the interview he mentioned his sexuality and that he was a homosexual. Trust Us Ltd has a strict Christian ethos and have written to him to inform him that he will not be taken on as a care assistant. He suspects that the reason why he was not employed is because of his sexuality.

Advise Trust Us Ltd on any potential claims that Lin Chang, David Frobisher and Samuel Kingston may bring against them.

**(25 marks)**

**Question 4**

Miniature Sea Productions Ltd manufactures seaside novelties in its factory, in Kempston. In the past there has been a large staff turnover on the production lines due to there being a large number of unskilled production staff.

The majority of staff on the production lines are female employees. Henry Morgan has for the past four weeks worked on the novelty lighthouse production line; he is the only male working on that particular line. Since he began working on the line he has received a great deal of unwanted attention including rude jokes, comments and a number of suggestive notes left on his work locker from the female members of staff. Despite informing his supervisor nothing has been done about the situation.

Anne Butcher has for the past three years worked in the wages department of the business as a wages clerk. Three months ago she applied unsuccessfully for a position in the sales department. Anne is disabled and has had appropriate adjustments made to her office. She suspects that the reason she has not been given the job in the sales department is due to her disability, as it would mean she would have to visit potential customers and her disability may embarrass the company.

Kala Chopra is a single parent who has worked at the company for the last nine months. Throughout that time she has had to take unscheduled time off to look after her children. The company records show that she has had 14 days in total to look after her children. The Personnel Department have now decided to terminate her employment.

(a) Advise Henry as to whether he can bring a claim against Miniature Sea Productions Ltd.

**(11 marks)**

(b) Advise Anne about any claim she may have.

**(6 marks)**

(c) Advise Kala about any claim she can bring against the company.

**(8 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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