

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 2011-2012, Richard Kidner, Oxford University Press, August 2011.**
- 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. Explain and critically analyse the changes to discrimination legislation under the Equality Act 2010.

(25 marks)

2. Explain the law before and after the abolition of the default retirement age. Critically analyse whether this development gives employers greater or lesser flexibility in workforce planning.

(25 marks)

3. Critically evaluate, using case law to support your answer, how the common law has developed protection for employees and others in the following areas:

(a) the area of health and safety

(13 marks)

(b) vicarious liability

(5 marks)

(c) the giving of references

(7 marks)

(Total: 25 marks)

4. "Parliament has given various forms of statutory protection to people who contract to work for others. The entitlement of an individual to the various forms of statutory protection depends upon the legal status of the individual under the contractual arrangements. Discerning the individual's legal status is not always easy" (Smith L J in *Autoclenz Ltd v Belcher and Others* [2009] EWCA 1046).

(a) Explain the tests that an employment tribunal will apply to determine whether an individual is a self-employed contractor, worker or employee.

(20 marks)

(b) What are the consequences of being classified as an agency worker by an Employment tribunal?

(5 marks)

(Total: 25 marks)

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

Question 1

Sallyann runs a small florists in Kempston. She employs eight staff, most of whom are part-time. Recently, she has lost some major clients to a new florists specialising in wedding flowers. As a result Sallyann has to consider reducing the size of her workforce.

Sallyann has drawn up a list of criteria against which she is going to judge the staff. The list is as follows;

Time keeping
Absence
Artistic flair
Flexibility

Sallyann is keen to retain Harminder as she is a good florist and is flexible about working late or coming in early as she is not married and has no children. However, Trudy, who has returned from maternity leave, has an eight month old baby and cannot do extra hours because of her childcare responsibilities. Another employee, Alice suffers from multiple sclerosis and regularly has time off sick.

The eldest staff member is Pete who has been employed by Sallyann since she started the florists 15 years ago. Sallyann is keen to include Pete within the staff she is making redundant as he has been complaining about the extra hours they have been working for a recent wedding. Sallyann feels Pete is just moaning and is too old for the job and the image that Sallyann is seeking to project, and Pete's attitude is affecting morale. She feels that working five 16 hour days during a busy period is normal and he should just get on with his work and be grateful he has a job.

Last week, Pete complained that he would not agree to Sallyann deducting £125 from his wages due to his carelessness with a pair of scissors which damaged some rare orchids. Sallyann had made it clear that Pete would be responsible for any further damage he caused after a very expensive incident when a display of 35 lilies was decapitated after Pete did a cartwheel across the floor of the florists in October. Sallyann has decided she will deduct it from his redundancy pay instead.

Sallyann hates confrontation and is worried about telling the staff she is selecting for redundancy. She has decided to inform them by letter which she intends to post at the airport when she leaves for her two week holiday. She has arranged for Harminder to run the business whilst she is away.

Sallyann has decided to retain Harminder and make everyone else redundant.

(a) Consider what, if any, issues arise with Sallyann's criteria for selection for redundancy and her proposed method of informing her staff.

(15 marks)

(b) Explain what, if any, potential claims (**other than redundancy**) Pete may have against Sallyann and what remedies he may seek.

(10 marks)

(Total: 25 marks)

Question 2

Kitty is employed as a marketing manager at a pottery company, 'Kitchen Colours'. Kitty has recently been co-ordinating the launch of a huge new range of pottery based on a daisy design. The launch of the new range has been kept secret and all 1500 employees were warned of the consequence of leaking either the colour range or details of the designs before the launch.

Last week, Kitty discovered that the company's main rival 'Trendy Trendy' has launched a new range of kitchenware based around a daisy design in very similar colours and shapes as her proposed range. She is concerned that someone has leaked details or sold confidential information to 'Trendy Trendy'.

Kitty suspects that one of the design team, Andrea Jones, may have disclosed details to her boyfriend David who works for 'Trendy Trendy'. Andrea has been with the company for 8 years. A copy of an email was seen on her computer and found on the printer opposite Andrea's computer. The email contained details of the new pottery range with photographs of the new range. The email address of the sender was andrea.jones@kmail.com which was sent to dave@trendytrendy.com.

Kitty was so angry when she saw the email that she went to find Andrea immediately. Unfortunately Kitty stormed into the design team meeting and confronted Andrea in front of the rest of the design team. Kitty accused Andrea of being responsible for the leak and suggested she resigned immediately or Kitty would ensure she 'had a fatal accident'. Andrea refused to resign and said she was not responsible. Kitty reported events to the Managing Director of 'Kitchen Colours' who summoned Andrea to a meeting and dismissed her with immediate effect. He gave Andrea a copy of her contract and told her "you need to find yourself a future out of pottery".

Clause 5 of Andrea's contract states

"5.1 Upon termination of this contract of employment, for whatever reason, the Employee will not be engaged in the marketing or publicity of pottery or related items on their own behalf or on behalf of any existing or previous clients or any suppliers of the Employer for the period of two years.

5.2 Furthermore, the Employee will not work for, or be engaged in any capacity with competitors of the Employer (including 'Trendy Trendy' or 'Kempston Kitchen Artefacts') for the period of 12 months following termination of this contract for whatever reason."

(a) Explain to 'Kitchen Colours' any claims and/or liabilities they may face in respect of the dismissal of Andrea.

(18 marks)

(b) Explain the enforceability, or otherwise, of Clause 5 of Andrea's contract.

(7 marks)

(Total: 25 marks)

Turn over

Question 3

Tommy had been employed as a plasterer by 'The Building Game' for 12 years. Last year, following his annual appraisal he was given an award for employee of the year. He has always been a popular employee, good with clients and his colleagues. His quality of work has never been questioned.

In September 2011, a new manager, Hardeep, started working for 'The Building Game' and introduced new procedures for the allocation of work to members of staff.

Previously, Tommy was quite flexible in his approach to work and was often telephoned on a Monday morning and told where to go that day and for the rest of the week. However, Hardeep introduced a requirement for every member of staff offsite to telephone him at 3pm every Friday afternoon to find out their arrangements for the next week. He gave each of them a diary and required them to record their time at each job. He also started making spot checks to see when everyone started and finished at each job.

Tommy found Hardeep's lack of trust very annoying and spoke to one of the owners of 'The Building Game', Cassie. Cassie said Hardeep was new and it would "all work out ok, just bear with us for a while". She reassured Tommy that he had nothing to worry about.

Last Friday, Tommy failed to telephone Hardeep at 3pm as he was busy and the mobile phone reception at the house where he was working was not very good. Tommy realised at 5.45 pm when he finished that he had not spoken to Hardeep, so he telephoned the office, but there was no answer as the office had closed at 4pm. Tommy decided to phone Hardeep on Monday morning instead.

On Monday, Tommy phoned Hardeep and was told he had failed to comply with the new procedures and that his timekeeping was unacceptable. As a result Hardeep had decided to suspend Tommy on half pay for one week as punishment. He also informed Tommy that a record would go on his personnel file for 12 months.

Tommy was so shocked that he told Hardeep he could "stuff his job if that was his attitude". Tommy returned his company van and mobile that evening by putting the van keys and mobile through the letterbox of the office.

Explain whether Tommy has any claim against 'The Building Game' and if so how the claim could have been avoided.

(25 marks)

Question 4

Gardeners' Paradise Ltd is a prestigious garden centre based in Kenilworth, Bedfordshire. It has a number of specialist plant nurseries where it produces some rare varieties of plants which are sold at premium prices to the public.

Bob is the manager and has a particular interest in the different varieties of hellebores which he cultivates. Winston Andrews is a new member of staff with little knowledge about plants, but an eagerness to learn. Bob does not like Winston who has a heavy Caribbean accent which Bob finds difficult to understand. Bob is usually very patient and enjoys teaching new staff about his hellebores, but has made it clear that Winston is to have nothing to do with this section of the garden centre. He refers to Winston as "that Rastafarian". Winston finds this very offensive and has complained to the head of personnel about this but was told "it's just Bob, he likes you really, don't create a fuss."

Another new employee is Felicity, who has been recruited to help out over the busy Christmas period. She has been working at the centre for 2 months. Bob really likes Felicity and gives her lighter work than he gives Winston. Felicity is also entrusted with checking the hellebore seedlings on Bob's day off. Yesterday Felicity's civil partner Carol brought their baby daughter into the garden centre to meet everyone. When Carol was introduced to Bob, he shouted at her and said "I didn't think you were one of them or I wouldn't have let you near my hellebores!"

Felicity was very upset and went home in tears. She was very reluctant to return to work the next day. When Felicity arrived at work everything seemed alright until she went to water the hellebores. When she approached the greenhouse she saw a large sign taped to the door. The sign said 'No lesbians welcome. Do not touch my hellebores.' Felicity called Winston who saw the sign and told Felicity she should tell the head of personnel. Felicity was so upset that she went home and has told Winston she is not coming back.

Mandy is another temporary employee who started on the same day as Felicity. She saw the incident when Bob met Carol and has told Felicity she will be a witness for her if she needed one. When Bob found out about this he threatened to dismiss Mandy.

Advise Gardeners' Paradise Ltd of the potential claims that Mandy, Winston and Felicity may have against it and how they arise. You should also consider the potential remedies available to them.

(25 marks)

End of Examination Paper

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