

CASE STUDY MATERIALS

June 2012
Level 6
PRACTICE OF EMPLOYMENT LAW
Subject Code L6-19

ilex

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INSTITUTE OF LEGAL EXECUTIVES
UNIT 19 - 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 ILEX Examination Regulations.

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* 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**

ADVANCE INSTRUCTIONS TO CANDIDATES

You work in the employment law department at the firm of Kempstons of the Manor House, Bedford, MK42 7AB as a trainee Legal Executive. Your supervising Fellow is Lucy Kuo and your local Employment Tribunal is situated in Bedford.

As part of your ongoing training you have been given a number of employment files to work on. The following documentation is particularly relevant:

- DOCUMENT 1** - Letter from Claire Oliver of Hair 2day to Lucy Kuo
- DOCUMENT 2** - Extract from Contract of Employment between Hair 2day and Jane Reeves
- DOCUMENT 3** - Attendance Note Patrick Kerry trading as the Sleepy Thyme Hotel
- DOCUMENT 4** - Email from Tom Robertson to Lucy Kuo
- DOCUMENT 5** - Marketing Literature from Atom Haulage Ltd
- DOCUMENT 6** - File Note Natasha Smith

DOCUMENT 1

LETTER

Hair 2day

*31 Kensington Road
Kempston
Bedford
MK42 8BB*

Ms L Kuo
Kempstons Solicitors
Manor House
Bedford
MK42 7AB

[Date]

Dear Ms Kuo

Re: Jane Reeves leaving salon

A couple of years ago your firm dealt with a personal injury claim I had and as I was very satisfied with the outcome I thought it would be best if I contacted you in respect of my current issue.

I own a hair salon. My senior stylist, Jane Reeves, has handed in her notice and intends to set up a hairdressing business from her home. She lives just down the road from my salon and I am really concerned about the effect this will have on my business as she is popular in the salon and she is likely to take a number of clients with her.

Can you get onto this as a matter of urgency and let me know what we can do to prevent her from competing with me. I enclose a copy of the standard contract of employment I use for my stylists. Thanking you in advance.

Yours sincerely

Claire Oliver

Claire Oliver

Enc. Contract of Employment

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DOCUMENT 2

EXTRACT OF EMPLOYMENT CONTRACT

- 10.** On the termination of your contract of employment with Hair 2day (regardless of who terminates the said contract) you will be subject to the following covenants:
- 10.1** You shall not for a period of three months after the termination of your employment either on your own account or in association with any other person, either directly or indirectly, be engaged as an employee or owner of a business within three miles of 31 Kensington Road, Kempston, Bedford, MK42 8BB where you would be acting in direct competition with Hair 2day or any subsidiary of the same.
- 10.2** You shall not for a period of three months after the termination of your employment either on your own account or for any other person approach, canvas, solicit or otherwise endeavour to entice away from Hair 2day the custom of any person who at any time during the twelve months preceding the termination of your employment both has been a customer or client and with whom you have personally had dealings.
- 10.3** Each of the covenants and obligations set out in each part of this Clause 10 shall be deemed to be separate and severable and enforceable by Hair 2day accordingly. In the event that any of the restrictions shall be held void, but would be enforceable if part of the wording was deleted, the parties agree that such restriction shall apply with such deletion as may be necessary to make it valid and enforceable.

DOCUMENT 3

ATTENDANCE NOTE

Attendance on: Patrick Kerry, Sleepy Thyme Hotel
Attended by: Lucy Kuo
Date: [Yesterday's Date]
Time taken: 30 minutes – attendance
5 minutes – dictating attendance note

I attended Patrick Kerry who owns and runs the Sleepy Thyme Hotel. The hotel has 80 rooms and he has a staff of 44 with him being the manager. All staff are directly employed by him, he does not use agency staff. He has recently had a number of employment issues which need to be dealt with.

Kate Punting has been on maternity leave for the last month and in the meantime Jenny Lin has been providing maternity cover. Last week Jenny Lin told Patrick Kerry that she was six months pregnant and that she would be looking to go on maternity leave when the time was right. Patrick Kerry wishes to check with us that it is alright to dismiss her and get someone else in to cover Kate Punting's maternity leave. Advise him accordingly.

One of the night porters, Robert Barry, is an Irish Traveller. Patrick Kerry was aware of his ethnic status when he employed Robert Barry and it has not been an issue, he is in fact very happy with his work and continues to be supportive. Last week Robert Barry wrote a note to Patrick Kerry stating that he was not happy as a number of staff were calling him names associated with him being a Traveller.

Finally, one of the chambermaids Rachel Surtees has been seen by other members of staff accepting money from customers when leaving their rooms. This is rather a delicate situation as the couple of times it has been seen to happen she was leaving the rooms of single male customers. Having been told about this, Patrick Kerry is quite surprised at her behaviour as she is one of his longest serving employees, having worked at the hotel for the last four years. This is obviously not acceptable and Patrick Kerry would like to begin disciplinary proceedings against her.

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DOCUMENT 4

EMAIL

To: Lucy Kuo@kempstons.org.uk
From: Tom Robertson@atomhaulage.org.uk
Sent: [Yesterday's date]
Subject: Redundancies
Attachments: None

Hello Lucy, I hope you are well?

As you know the business is not doing particularly well and we are looking to make a number of staff redundant with the hope that we can save the business from going under.

Most of the drivers are understanding and know that we are not in a position to do anything else. I have initially asked for voluntary redundancies to see whether this will help and we have had a couple of drivers who have applied.

I have looked through their applications and I am happy for them to take the voluntary redundancy but I need some help as to how we make this official.

One of our current drivers, Rodney Adams, is getting on a bit and he will need to renew his HGV licence next year. I am looking to make him redundant with the two who are volunteering.

I hope this will be enough to stave off losing the business otherwise I will need to consider whether there are any buyers out there for the business. I know we looked into this last year and Fastlane Haulage were interested, we may need to contact them.

Can you drop me a line to give me some advice?

Thanks Lucy.

Regards

Tom

MARKETING LEAFLET OF ATOM HAULAGE LTD



Atom

Haulage

If you want a delivery fast and safe then Atom Haulage is the company for you.

We have 22 HGVs and dedicated employed drivers who take care to ensure loads arrive on time and in the same condition they left in.

Our modern communications centre and transit warehouse provide you with a complete transport solution. We have an established support team so you know we can cater for large and small contracts.

We have established relationships and ongoing contracts with a number of local businesses but we have the capacity and ability to take on more.

Contact our MD directly, Tom Robertson, to see how we can meet your transport needs.

Telephone No. 01993 642134
Tom.Robertson@atomhaulage.org.uk

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FILE NOTE (RE: NATASHA SMITH)

To: Trainee Legal Executive
Client: Natasha Smith
Date: Today's date
File ref: LK/353211-2
From: Lucy Kuo

I have had a preliminary meeting with Natasha Smith who, until 27 April 2012, had worked for Pickerings Perfection (Graphic Design) Ltd. She had worked for the business for the last four years as a graphic designer and she tells me that for three of those four years she was very happy there.

The business was bought a year ago by Henry Simmington and his wife Katherine Simmington. Henry Simmington does not have anything to do with the day to day management of the company; this is left to Katherine Simmington, who is the managing director.

Since the business was bought the management style changed and the expectations of the level of work to be produced increased considerably. Regular targets were set and these targets were, according to Natasha Smith, unrealistic. After three consecutive months she failed to meet the targets and was humiliated in front of the other six graphic designers by Katherine Simmington when her failure to reach the targets was revealed to them.

During the following six months she managed to hit the targets set by Katherine Simmington but only through a great deal of extra work and this led to her being ill. Natasha Smith told me that at times she was working up to 50 hours per week to ensure she met the targets (checked with her she had opted out of Working Time Regs). Unable to cope with the pressure she went to her doctor who diagnosed that she was suffering from a mild form of depression.

Having been diagnosed with depression, Natasha Smith telephoned Katherine Simmington and told her that she would not be able to work for the next month and that she may need to come back on a phased return after that. Katherine Simmington seemed very concerned about our client's welfare on the telephone and told her not to worry and that she would have a good chat when she came back to work.

On Natasha Smith's return to work on the 9 April Katherine Simmington provided for a phased return and all went well for the first week. During the second week of Natasha Smith's return she was sent an email by Katherine Simmington's secretary, Nicola Danton, stating that she was emailing her to warn her that her productivity was too slow and this needed to be increased (dated the 17 April). Natasha Smith was upset about the email but ignored it as she heard no more about her level of productivity until the 27 April.

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On the 27 April Natasha Smith was asked to go to Katherine Simmington's office for an informal chat by Nicola Danton. On arrival she was asked to sit down and was told bluntly, by Katherine Simmington, that as much as she would like to do her bit for care in the community the business was suffering and she would need to find someone else to take over Natasha Smith's job. She was then told to leave by Katherine Simmington. At no point was Natasha Smith given the opportunity to put her views to Katherine Simmington.

Natasha Smith was in shock and was not allowed to return to her desk to collect her personal items. Instead Rodney Ward, the company's security guard, took her arm and escorted her from the premises. While leading her to the door, Rodney Ward said to Natasha Smith how sorry he was that she had been sacked because he had overheard Katherine Simmington saying to Nicola Danton, just before Natasha Smith had entered the office that she had to go because she was a depressing cow to work around.

Since being dismissed by Katherine Simmington she has received no further correspondence, other than a box of her personal effects, or compensation in any form for the loss of her job or the lack of notice. Note that because the depression was only a mild form I have discounted a claim on the basis of disability discrimination.

This matter needs to be moved forward at the earliest opportunity. You should have enough information to begin proceedings if you look in the file, but if you feel you need to speak to Natasha Smith she is more than happy to come in and discuss the matter further.

End of Case Study Materials

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