



THE CHARTERED 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 2012-2013, 22nd edition, Richard Kidner, Oxford University Press 2012.**
- 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 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. Section 230 Employment Rights Act 1996 defines the terms 'employee' and 'worker'. Critically discuss:

(a) Why the distinction between 'employee' and 'self-employed' is important;

(6 marks)

(b) The different tests that the UK courts have developed over the years to determine whether a person is an 'employee';

(10 marks)

(c) Why the concept of 'worker' is important.

(9 marks)

(Total: 25 marks)

2. 'Reorganisation may or may not end in redundancy: it all depends on the nature and effect of the reorganisation.'

Phillips J in Robinson v British Island Airways Limited (1977).

Critically analyse when redundancy arises and discuss whether the law on redundancy is satisfactory.

(25 marks)

3. Critically examine how European Union legislation, the Equality Act 2010 and case law give protection to workers against inequality in pay.

(25 marks)

4. Critically evaluate the effect of the Equality Act 2010 in the areas of:

(a) Age discrimination;

(12 marks)

(b) Disability discrimination.

(13 marks)

(Total: 25 marks)

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

Question 1

Alan and Bengtha are senior design engineers at FTP Ltd, a manufacturer of mobile phones. Since the economic downturn, business has been slow at FTP Ltd. To supplement his income, Alan has been working as a freelance engineer during his spare time for the past nine months. Colin is one of FTP Ltd's competitors for whom Alan has been working during this period. Colin has asked Alan to supply him with some sensitive information regarding FTP Ltd's price strategy and has suggested that Alan joins him in a new partnership business which Colin aims to set up within the next month. Alan is considering the offer made by Colin.

In Alan's employment contract are the following clauses:

- 9(a) During your normal hours of work you may not, without the prior written consent of the Company, devote any time to any business other than the business of the Company or to any public or charitable duty or endeavour.
- 9(b) During the period of your employment you will not, without the prior written consent of the Company, undertake any work or other activity which may prejudicially affect your ability properly and efficiently to discharge your duties and responsibilities. The decision as to whether or not an activity would have a prejudicial effect shall be at the absolute discretion of the Company.
- 9(c) You will not at any time either during your employment or afterwards, use or divulge to any person, firm or company, except in the proper course of your duties during your employment by the Company, any confidential information identifying or relating to the Company, details of which are not in the public domain, or such confidential information or trade secrets relating to the business of any customer of the Company which have come to your knowledge during your employment.

Bengtha has recently discovered that she is pregnant. When she informed her manager, Daniel, that she was pregnant, he dismissed her immediately. As Bengtha was leaving the office, she overheard a conversation between Daniel and a male colleague where Daniel said: 'Pregnant women disrupt my business. I simply can't afford such costs.' Bengtha has been a good employee for the past four years and is distraught by the dismissal.

- (a) Advise Alan of his contractual obligations to FTP Ltd.

(10 marks)

- (b) Advise Bengtha of any claim(s) that she may bring against FTP Ltd. You should also consider the potential remedies available to her.

(15 marks)

(Total: 25 marks)

Turn over

Question 2

Cherry Blossom Care Homes Ltd (CBCH) operates a number of care homes for the elderly in and around Kempston. CBCH employ a total of 75 workers. Some are full-time, some are part-time, some are on fixed-term contracts and there are a number of agency staff.

Estelle works part-time at CBCH as she has a young family to look after. Although she is content to remain as a part-time carer at CBCH, Estelle is keen to receive training on how to care for patients with dementia. Estelle used to work primarily as a carer for autistic patients. When she asked her line manager, Fred, whether she can attend a course on dementia, he said that only full-time carers can attend such courses as otherwise, it will be too costly. He added that when the full-time carers return from a course, they will produce photocopies of the relevant notes to part-time carers. Yesterday, Estelle returned to work after suffering from gastroenteritis for two weeks. She learnt from her full-time colleagues that they are entitled to enhanced sick pay in their contracts. When she checked her contract, there was no such provision.

Gin-Ying is 29 years old and is a temporary agency worker. She arrived from China recently and is gaining experience by working at different care homes. As she is keen to learn and to impress, she accepted an hourly wage of £4.50 and has on average worked 65 hours per week at CBCH for the last 14 weeks. She has been told that she cannot take any holiday until she has worked for CBCH for six months.

Hans has been on several fixed-term contracts with CBCH for the past three years. He previously worked as a carer at another care home for nine years. He would like to be considered for a permanent position at CBCH. Hans found out from his full-time colleagues that there are two permanent positions for Senior Care Assistants in the Job Vacancy email alerts. After some investigation, Hans realised that the group email address 'FTcarers@CBCH.org.uk' was used in the email alerts, so only full-time carers received notification of job vacancies. Hans also wonders whether his fixed-term contract can be converted into a permanent contract.

Advise CBCH of the employment issues concerning Estelle, Gin-Ying and Hans.

(25 marks)

Question 3

The Rosemary is a Michelin star restaurant in Kempston. It is famous for its use of fresh, local produce as well as its innovative and artistic dishes. Ian, the head chef at The Rosemary, is passionate about his job. He is however, also known for his demanding nature and volatile temper.

John is the pastry chef and has worked at The Rosemary for nine years. During a very busy Friday evening, John was struggling to keep up. His wife is seriously unwell in hospital undergoing tests. In addition to this, his assistant pastry chef, Arrol, has been making mistakes with the caramel biscuits. In helping Arrol, John was falling behind with his preparation.

When Ken, the head waiter, told John that the dessert orders were mixed up and one of the caramel biscuits was broken, John apologised and went to rectify the problem. However, Ian overheard the conversation and confronted John, saying that it was unacceptable that he made two mistakes in one evening. John was trying to explain to Ian about his wife and Arrol when Ian shouted: 'Excuses, excuses, excuses... I have had enough of you John. Frankly, your performance has been poor over the past week. You are shockingly amateur and a disgrace to The Rosemary. You are not fit to grill a burger. I cannot put up with this any more!' As the entire kitchen overheard Ian's exclamation, John felt embarrassed and humiliated. He shouted: 'You have made it impossible for me to carry on working here. Stuff this.' John threw down his apron and walked out of the kitchen. An hour later, Ian sent John a text message and said that John was dismissed with immediate effect.

Lily, one of the waitresses at The Rosemary, was in the kitchen and was upset by the incident. She started crying and was comforted by Marc, a waiter. Marc hugged her and started kissing her. Lily felt uncomfortable and told him to stop but he carried on. Everyone in the kitchen was still too shocked by John's departure to do anything.

Advise John and Lily as to whether they have any claim(s) against The Rosemary. You should also consider the potential remedies available to them.

(25 marks)

Turn over

Question 4

KMetro Ltd is Kempston's local newspaper. It is a small family-run company. The managing director is Nialls Morgon. The staff consists of five journalists, three reporters and six printing and administrative staff.

Angus is the design manager of KMetro Ltd. He designs and inserts the advertisements into the paper. He has worked at the company for 18 months. His colleague, Bob, has been off work for four weeks with a serious injury. Angus had been working a 75 hour week as a result and had been unable to take any holiday for three months. When he received his roster for last week, he emailed Nialls, stating that he was unable to work on Monday and Tuesday as "the company is not respecting my working-time rights". As a result, he was dismissed.

Two weeks ago, Nialls was angry with Connie when she mistakenly ordered 10 boxes of high quality coloured paper instead of 10 boxes of high quality white paper. As Connie had already opened one of the boxes, she could not return the paper. Nialls decided to deduct £150 from her wages due to her carelessness. Connie complained and threatened to resign, stating she had felt bullied by Nialls for the past two years.

Daniel is the delivery driver for KMetro Ltd. He has worked for the company for 10 years and has always had a clean driving licence. Nialls summarily dismissed Daniel when Daniel received a third parking ticket within three months. Daniel has written to the company disputing his dismissal and stating that the real reason for his dismissal was that he had asked for paternity leave.

Angus, Connie and Daniel have each commenced proceedings in the Employment Tribunal.

Advise KMetro Ltd of its potential liability to them.

(25 marks)

End of Examination Paper

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