

## 2023 UNIT SPECIFICATION

<b>Title:</b>	(Unit 13) The Practice of Employment Law
<b>Level:</b>	3
<b>Credit Value:</b>	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
<b>1. Understand the practical scope of employment law practice</b>	<b>1.1</b> Explain different features of employment law practice	<b>1.1</b> Examples of typical employment law practice: <ul style="list-style-type: none"> <li>• covering advice and/or representation on initially forming an employment relationship, managing the continuance of the relationship, ending the relationship and following its termination;</li> <li>• difference between the contentious and non-contentious areas of employment law practice;</li> <li>• the potential legal, social and commercial implications of employment law practice;</li> <li>• dealing with initial enquiries and standard documentation;</li> <li>• the types of funding arrangements available for employment matters;</li> </ul>

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		<ul style="list-style-type: none"> <li>• in basic outline giving examples of drafting standard documents e.g. terms of service, settlement agreements, grievance policies etc.</li> </ul>
<b>2. Understand the legal implications of recruitment</b>	<p><b>2.1</b> Identify potential legal pitfalls in job advertisements, interviews or consequent recruitment process</p> <p><b>2.2</b> Explain the discrimination cause(s) of action which may arise</p>	<p><b>2.1</b> Identify potential issues with job advertisements, interviews and recruitment process;</p> <ul style="list-style-type: none"> <li>• identification of common issues and problems;</li> <li>• the consequences of incorrect and/or inappropriate information.</li> </ul> <p><b>2.2</b> Explanation of, the protected characteristics under s.4 Equality Act 2010:</p> <ul style="list-style-type: none"> <li>• Age (s.5);</li> <li>• Disability (s.6);</li> <li>• Gender re-assignment (s.7);</li> <li>• Marriage and civil partnership (s.8);</li> <li>• Race (s.9);</li> <li>• Religion and other belief (s.10);</li> <li>• Sex (s.11);</li> <li>• Sexual orientation (s.12);</li> <li>• Pregnancy and Maternity (s.18);</li> <li>• core provisions of the Equality Act 2010;</li> <li>• an understanding of direct and indirect discrimination which may arise in the recruitment and selection process.</li> <li>• Disability discrimination under s.15</li> <li>• an understanding of the obligations of an employer to make reasonable adjustments under s.20.</li> </ul>

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	<p><b>2.3</b> Explain the remedies available to job applicants following a successful discrimination claim</p> <p><b>2.4</b> Describe the legal and practical issues which can arise concerning the provision of, and reliance on, references given by employers</p> <p><b>2.5</b> Apply an understanding of the principal legal and practical advice to a given situation</p>	<p><b>2.3</b> Explanation of the potential remedies available for discriminatory advertisements including the exposure of the publisher of the advertisement. In outline the potential remedies available to a successful claimant in a discrimination claim.</p> <p><b>2.4</b> The duty of care arising concerning the provision of references:</p> <ul style="list-style-type: none"> <li>• Data protection issues under the Data Protection Act 2018 and General Data Protection Regulation 2018, specifically the exemption from a subject access request (SAR);</li> <li>• the duty of care in negligence;</li> <li>• contractual duties;</li> <li>• liability in the tort of defamation;</li> <li>• potential victimisation and discrimination claims concerning the provision of references;</li> <li>• case law, <u>Spring v Guardian Assurance plc (1995)</u>.</li> </ul> <p><b>2.5</b> Application to a scenario.</p>
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<p><b>3. Understand the essential statutory principles governing the employment contract</b></p>	<p><b>3.1</b> List the elements of the written particulars of employment which must be supplied to employees</p> <p><b>3.2</b> Identify other main statutory requirements which regulate the content of contractual terms</p> <p><b>3.3</b> Describe the remedies available in the employment tribunal to the employee where the employer fails to comply with the legislative requirements</p> <p><b>3.4</b> Apply an understanding of the essential statutory principles to a given situation</p>	<p><b>3.1</b> The contents of sections 1-7 ERA 1996.</p> <p><b>3.2</b></p> <ul style="list-style-type: none"> <li>• Working Time Regulations 1998: 48 hour working week, opt outs, minimum paid holiday entitlement, entitlement to rest breaks;</li> <li>• National Minimum Wage Act 1998: current adult rates only (not those under 18 or apprenticeship rate);</li> <li>• s.86 ERA 1996: minimum notice period;</li> <li>• Welfare Reform &amp; Pensions Act 1999 as amended by Pensions Act 2008 and 2011: minimum pension provision.</li> </ul> <p><b>3.3</b> S.11 ERA 1996 and the right to apply to an employment tribunal where the statement not supplied, including the remedy of a declaration and the circumstances in which compensation is payable.</p> <p><b>3.4</b> Application to a scenario.</p>
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<p><b>4. Understand additional desirable contractual terms and policies which further define the employment relationship</b></p>	<p><b>4.1</b> Explain standard additional employment terms which may also be incorporated into the contract of employment</p> <p><b>4.2</b> Describe the role of policies and procedures within an employer organisation</p> <p><b>4.3</b> Explain the reasons for key policies and procedures</p> <p><b>4.4</b> Apply an understanding of core desirable contractual terms and policies to a given situation</p>	<p><b>4.1</b> Provisions over and above matters governed by the written particulars including:</p> <ul style="list-style-type: none"> <li>• probationary period clauses;</li> <li>• gross misconduct clauses and the power to dismiss summarily;</li> <li>• payments in lieu of notice;</li> <li>• garden leave;</li> <li>• restrictive covenants;</li> <li>• protection of confidential information;</li> <li>• mobility clauses;</li> <li>• non-poaching, and non-dealing clauses; their rationale: expressly included as they are desirable from an employer’s perspective.</li> </ul> <p><b>4.2</b> Core policies:</p> <ul style="list-style-type: none"> <li>• Discipline, Dismissal and Grievance;</li> <li>• Internet and communications use;</li> <li>• Equal opportunities;</li> <li>• Whistle blowing;</li> <li>• Health and Safety;</li> <li>• Flexible working;</li> <li>• outlining their typical provisions.</li> </ul> <p><b>4.3</b> The importance of preventing claims arising by the adoption, implementation and review of a comprehensive up to date company handbook.</p> <p><b>4.4</b> A claim for breach of contract, i.e. wrongful dismissal and the heads of claim. <u>General Billposting v Atkinson (1908)</u> on post termination restraint of trade clauses and <u>Briggs</u></p>
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		<p><u>v Oates</u> (1990) where a wrongful dismissal has taken place.</p> <p>Application to a scenario;</p> <ul style="list-style-type: none"> <li>• analysing poorly drafted terms;</li> <li>• drafting of simple terms for inclusion in a contract.</li> </ul>
<p><b>5. Understand the right to request flexible working, maternity and paternity leave and pay and other family friendly policies</b></p>	<p><b>5.1</b> Explain the right to time off for ante natal care and when ordinary and additional maternity leave and pay will be granted</p> <p><b>5.2</b> Explain entitlement to paternity, adoption leave and pay</p> <p><b>5.3</b> Explain the right to request flexible working for carers of adults and children</p>	<p><b>5.1 and 5.2</b></p> <ul style="list-style-type: none"> <li>• Basic maternity, paternity, adoption leave, shared parental leave and pay rights;</li> <li>• understand the role of a policy governing such matters based on a working knowledge of: ante natal care provisions and remedies;</li> <li>• compulsory, ordinary and additional maternity leave;</li> <li>• Parental leave etc including Shared Parental Leave Regulations 2014 and the Paternity and Adoption leave (Amendment) Regulations 2006, SI 2006/2014, Employment Act 2002 and Part VIII ERA 1996 as amended;</li> <li>• Maternity and Paternity Pay Social Security Contributions and Benefits Act 1992 as amended.</li> </ul> <p><b>5.3</b> Right to request flexible working including an awareness of the qualifying criteria, the permitted grounds of refusal and remedies.</p>

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	<p><b>5.4</b> Explain the right to unpaid parental leave and time off for dependants.</p> <p><b>5.5</b> Identify when an employee may claim pregnancy or maternity discrimination</p> <p><b>5.6</b> Apply an understanding of these rights and entitlements to a given situation</p>	<p><b>5.4</b></p> <ul style="list-style-type: none"> <li>• The right to unpaid parental leave, the amount of leave and the remedies under the following for parental leave: Employment Rights Act 1996, Employment Relations Act 1999, Employment Act 2002, Maternity and Parental Leave etc Regulations 1999;</li> <li>• time off for dependants: Employment Rights Act 1996, Employment Relations Act 1999.</li> <li>• The right to paid time off under the Parental Bereavement (Leave and Pay) Act 2018.</li> </ul> <p><b>5.5</b> Equality Act 2010, protected characteristic of pregnant woman and one who is on maternity leave or about to take maternity leave. s.18 Equality Act 2010.</p> <p><b>5.6</b> Application to a given scenario.</p>
<p><b>6. Understand how to manage redundancy situations</b></p>	<p><b>6.1</b> Describe the three main circumstances in which a genuine redundancy can arise</p> <p><b>6.2</b> Explain the main elements of a fair redundancy procedure</p>	<p><b>6.1</b> Definitions in section 139 ERA 1996.</p> <p><b>6.2</b> The necessary stages in a planned redundancy including, identification of the pool, seeking volunteers, application of objective criteria for selection, individual and collective consultation, right to appeal etc (including the provisions of s.188 and s.193 of Trade Union and Labour Relations (Consolidation) Act 1992 'TULRCA') and the relevant time limits for consultation</p>

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	<p><b>6.3</b> Identify the likely remedies available following a poorly handled redundancy</p> <p><b>6.4</b> Apply an understanding of redundancy procedure to a given situation</p>	<p>periods. The calculation of a statutory redundancy payment.</p> <p><b>6.3</b> The remedies available to an employee who has been unfairly selected for redundancy.</p> <p><b>6.4</b> Application to a scenario.</p>
<b>7. Understand how to manage dismissals</b>	<p><b>7.1</b> Identify the eligibility criteria to pursue a claim of unfair dismissal</p> <p><b>7.2</b> Identify the potentially fair reasons to dismiss</p> <p><b>7.3</b> Explain the procedure which must be followed prior to a dismissal, including fairness in all the circumstances, the band of reasonable responses and the role of fair procedure</p>	<p><b>7.1</b> An outline of: preliminary qualifying requirements (including constructive dismissal) <u>Western Excavating v Sharpe</u> (1978) for a claim of unfair dismissal.</p> <p><b>7.2</b> The five potentially fair reasons under s.98 ERA 1996:</p> <ul style="list-style-type: none"> <li>• capability;</li> <li>• conduct;</li> <li>• redundancy, statutory illegality;</li> <li>• some other substantial reason;</li> <li>• recognition of automatically unfair reasons for dismissal.</li> </ul> <p><b>7.3</b> Building upon 6.1 &amp; 6.2 above, an understanding of the Employment Act 2008 in respect of the ACAS Code of Practice on Disciplinary and Grievance Procedures; an understanding of the ACAS Code of Practice, fair procedure including procedural fairness for a conduct dismissal, <u>BHS v Burchell</u> (1978) and the band of reasonable</p>

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	<p><b>7.4</b> Identify the remedies available to an employee when the employer implements an unfair dismissal</p> <p><b>7.5</b> Apply an understanding of the management of dismissals to a given situation</p>	<p>responses of the employer, <i>Iceland Frozen Food v Jones</i> (1988), <i>HSBC Bank v Madden</i> (2001).</p> <p><b>7.4</b> The function of the Employment Tribunal;</p> <ul style="list-style-type: none"> <li>• compensation (to include calculation of basic award and an understanding of compensatory award including the potential increase or decrease to the awards for failure to follow the ACAS Code of Practice by either claimant or respondent and the role of mitigation);</li> <li>• awareness of further remedies of reinstatement and reengagement and advising on the practicalities of such awards.</li> </ul> <p><b>7.5</b> Application to a scenario;</p> <ul style="list-style-type: none"> <li>• simple compensation calculations for the basic award and identifying the heads of claim for a compensatory award. To include a basic consideration of the remedies for a wrongful dismissal claim to include notice period and any benefits in kind.</li> </ul>
<p><b>8. Understand how to submit a simple claim in an employment tribunal</b></p>	<p><b>8.1</b> Identify the formal elements of an ET1 or ET3 form</p> <p><b>8.2</b> Describe the main time limits for lodging claims in the tribunal and the rules governing extensions of those time limits</p>	<p><b>8.1</b> An understanding of the key factual information contained in an ET1/ET3 form.</p> <p><b>8.2</b> The time limits for unfair dismissal and a selection of other claims including:</p> <ul style="list-style-type: none"> <li>• claims for statutory redundancy payments;</li> <li>• a working knowledge of the circumstances in which time may be extended and for wrongful dismissal the considerations with choice of forum either employment tribunal or civil courts.</li> </ul>

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	<p><b>8.3</b> List the processes and orders available in the tribunal and their appropriate use</p> <p><b>8.4</b> Apply an understanding of the employment tribunal procedures to a given situation</p>	<ul style="list-style-type: none"> <li>• Knowledge in basic terms of ACAS conciliation.</li> </ul> <p><b>8.3</b> The key stages of a tribunal claim e.g. directions at preliminary hearings, their purpose and effect. Standard directions for the preparation of a final hearing. In outline only the conduct of a final hearing.</p> <p><b>8.4</b> Application to a scenario; completing an ET1 or ET3 form.</p>
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Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the practice of Employment Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 45 First Line Employment Legal Advice and Unit 46 Employment Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2011

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