



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 6 – EMPLOYMENT LAW

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Overall, the performance of the candidates was wide ranging with some clear and detailed answers submitted.

Most candidates were able to provide answers that were detailed and contained the right amount of law and application. In order to achieve higher grades more legal authority could be applied throughout. Some candidates provided out-of-date information but it is important to remain within the guidance CILEX provides on this.

Scenario 2 was the most popular one for this paper, however a number of candidate responses were confused between wrongful and unfair dismissal.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This was answered reasonably well. It has been noted in previous Chief Examiner's reports that there is no right to be unfairly dismissed. There is a right not to be unfairly dismissed / compensated for, if a person meets the preliminary requirements.

Question 2

This was answered reasonably well.

Question 3

This was answered reasonably well. However, a number of candidates did not mention 'because they have enforced' and focused on 'trying to enforce' the right not to be discriminated against.

Question 4

This was answered reasonably well; however, some candidates discussed the eligibility criteria for unfair dismissal.

Question 5

This question related to the classes of employees that are excluded from claiming unfair dismissal and not employee/ non-employees generally.

Question 6

Generally, the responses lacked explanation, it is not enough just to say 'if there is an obligation to provide work and an obligation to do work' as this does not explain what the purpose of the statement is and why it is used. Most candidates, however, did cite the correct case.

Question 7

This question was answered reasonably well.

Question 8

There was a mixed response to this question, most candidates demonstrated an understanding of this substantive fairness.

Question 9

This question was not answered well, there was a wide variety of rates provided. It is worth remembering that the minimum wage rates are updated yearly.

Question 10

Most candidates were able to identify implied duties but were not always able to explain the duty.

Section B**Scenario 1****Question 1(a)**

This question required the candidates to apply the eligibility criteria for unfair dismissal to Andrew's situation and the responses varied. Some failed to mention that he is an employee who works mainly overseas and as such it must be established whether or not he is an excluded category. Some candidates focused on the fact that he had refused to obey an order to use faulty equipment, this was not relevant in question as the focus was on eligibility to claim.

(b)

Most candidates recognised the potentially fair reason for dismissal and explained whether or not this would be likely to succeed.

Question 2

This question was answered well, however, as mentioned in previous Chief Examiner's reports the S1 statement must be given to workers from day 1. It is important to note that a grievance can be raised before applying to a tribunal.

Question 3

Questions on working time regulations are often popular with candidates and generally the candidates perform well.

Question 4

This question was answered reasonably well.

Scenario 2

Question 1(a)

A number of responses confused wrongful and unfair dismissal. Unfair dismissal should have been ruled out quickly as there was nothing to indicate that the eligibility criteria could be met. The criteria for wrongful dismissal should have been applied. In some responses wrongful and unfair dismissal were unfortunately, interchangeably applied.

Some candidates failed to realise that gross misconduct during the notice period could justify a summary dismissal.

(b)

This question was answered well.

Question 2(a)

This question was answered reasonably well, However, some responses failed to mention all of the preliminary requirements.

(b)

The responses to the questions were applied reasonably well, those that gained the higher grades also explained the need for a dismissal well. Candidates who cited the relevant case and/ or statute also did well. Some candidate responses were muddled as unfair and wrongful dismissal were applied interchangeably.

Question 3

Most candidates were able to discuss the disciplinary process, but some failed to discuss the need for investigation and establishing the facts.

Question 4

Most candidates were able to identify the remedies available.

Scenario 3

Question 1

The responses to this question were applied reasonably well.

Question 2(a)

This question was answered well. Those with a higher grade fully applied all the factors for establishing wrongful dismissal.

2(b)

Again. this question was applied reasonably well with detailed explanation of her entitlement should the claim be successful.

Question 3(a)

This question was answered well.

(b)

This was answered well but more application was needed for higher marks.

Question 4

This question was answered well. For full marks the relevant act and section was needed.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 UNIT 6 – EMPLOYMENT LAW

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	Responses should include any two of the following: <ul style="list-style-type: none">• Right not to be unfairly dismissed (subject to qualification)• Right to compensation when made redundant (subject to qualification)• Right to a minimum wage)• Right to minimum notice period)• Right to statutory sick pay	2
Question Number	Suggested Points for Responses	Marks (Max)
2	Responses should identify any two of the following: e.g. <ul style="list-style-type: none">• Non- solicitation clause• Non- dealing clause• Restrictive covenant• Garden leave clauses• Intellectual property ownership• Mobility clause	2

Question Number	Suggested Points for Responses	Marks (Max)
3	Responses should explain any two of the following <ul style="list-style-type: none"> • Victimisation occurs when B is subjected to a detriment • Because they have enforced • Or tried to enforce • Theirs or someone else's right not to be discriminated against • S27 Equality Act 2010 or relevant case law Credit is given for relevant points within the Act	5
Question Number	Suggested Points for Responses	Marks (Max)
4	Responses should include any three of the following <ul style="list-style-type: none"> • there must be a dismissal without any notice/ incorrect notice • no Pilon • the employee must not have given grounds for a repudiation of the contract by the employer • s.86 ERA 1996 or contractual notice 	3
Question Number	Suggested Points for Responses	Marks (Max)
5	Responses should include any two of the following <ul style="list-style-type: none"> • Crown employees • Share fishermen • Military • Clergy • Those that work mainly overseas 	2
Question Number	Suggested Points for Responses	Marks (Max)
6	Responses should include any three of the following: <ul style="list-style-type: none"> • It is the minimum requirement for a contract of employment • establishes employment status • e.g. If there is no obligation to provide work and no obligation to accept work, then they are not employees • Carmichael v National Power plc [1999] 	3
Question Number	Suggested Points for Responses	Marks (Max)
7	Responses should include any three of the following: <ul style="list-style-type: none"> • S86(2) ERA 96 • After they have been employed for two years they receive two - weeks • for each year of employment to a maximum of 12 weeks 	3

Question Number	Suggested Points for Responses	Marks (Max)
8	Responses should include any three of the following points <ul style="list-style-type: none"> • whether an employer acted with substantive fairness • was this something that a reasonable employer would have done? • Not based on what the ET Judge would think • objective test • E.g., HSBC Bank v Madden (2001) / Iceland frozen foods 	5
Question Number	Suggested Points for Responses	Marks (Max)
9	Identification of the following <ul style="list-style-type: none"> • £9.50 (April 2022) or • £10.42 (April 2023) • In accordance with the 6-month rule 	1
Question Number	Suggested Points for Responses	Marks (Max)
10	Explanation of any two of the following <ul style="list-style-type: none"> • The duty of trust and confidence, • e.g., to treat the employee with respect/ Ogilvie v Neyrfor-Weir (2003) or • the duty to pay wages • e.g., employees must be paid the correct amount or • the duty to provide work in certain circumstances • e.g., professional workers / piece work. credit is given for the identification and explanation of other relevant duties.	4
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Reasonable responses should include the following:</p> <p>In order to claim unfair dismissal Andrew would need to establish that he meets all the requirements.</p> <ul style="list-style-type: none"> • He must establish that he is an employee and not a member of an excluded category. • Andrew works mainly overseas, which is an excluded category, however, he has a sufficiently strong connection with the UK • he is paid in Sterling, which could allow him to establish that he is an employee, • relevant case law e.g., <i>Ravat v Halliburton Manufacturing and Services Ltd</i> (Scotland) (2012). • Andrew also has the correct amount of qualifying employment, as he has been continually employed for 4 years. • Any absence due to illness or injury, up to 26 weeks, does not break the qualifying period • s.212 ERA 1996. • Andrew has also been dismissed. • This became clear when he received the letter • Therefore, he is eligible to claim • if he files within the three months 	10
1(b)	<p>Responses should include the following</p> <ul style="list-style-type: none"> • The potentially fair reason to dismiss Andrew would be unsatisfactory conduct • s.98(2) ERA • This is because Andrew failed to obey a reasonable/lawful order • This is a breach of the implied duty to obey reasonable orders • He refused to use the faulty equipment • This is not a reasonable/lawful order • as it would be a breach of health and safety • This would not amount to misconduct • Therefore, Zelma did not have a potentially fair reason to dismiss 	9
Question 1 Total: 19 marks		

Question Number	Suggested Points for Responses	Marks (Max)
2	Responses should include the following: <ul style="list-style-type: none"> Bella's contract does not have to be in writing (s.2303 ERA 1996) she is entitled to s.1 statement ERA 1996 from day one She could raise a grievance with her employer or Failure to provide it means that Bella can apply to a tribunal where the tribunal can insert their own terms Zelma could also be forced to pay compensation to Bella if it is a substantive claim 	7
Question Number	Suggested Points for Responses	Marks (Max)
3	Responses should include the following <ul style="list-style-type: none"> Working Time Regulations 1998, employees are entitled to 5.6 weeks' holiday per year unless the contract provides for more pro rata. Full-time employees are entitled to 28 days per year including bank holidays 15 days is less than the minimum that Bella is entitled to. 	6
Question Number	Suggested Points for Responses	Marks (Max)
4	Responses should include the following <ul style="list-style-type: none"> Bella has been directly discriminated against s.13 Equality Act (EA) 2010 as she has less holiday entitlement than the other employees She has been treated less favourably because of a protected characteristic race under s.9 EA 2010 Race covers nationality, ethnic or national origins Bella is Somalian Zelma refers to her as a foreigner She is entitled to the same holidays as everyone else Relevant case e.g., James v Eastleigh Borough Council (1990). 	8
Scenario Total: 40 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> Kevin may have a wrongful dismissal/breach of contract claim against Jonah. s.86 Employments Rights Act 1986 Kevin is entitled to a minimum of one week's notice or longer, if his contract provides for longer which it appears not Kevin is entitled to the statutory minimum but he has only been paid for 3 days so he has a claim for 4 days net pay. But drilling a hole in the boat amounts to gross misconduct Reasoned conclusion e.g., Jonah is entitled to dismiss him without notice 	10
1(b)	<ul style="list-style-type: none"> Employment Tribunal County Court or High Court. 	2
Question 1 Total: 12 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> must be an employee two year's continuous employment. They must have been dismissed made their claim within 3 months of the effective date of termination Also, they must not fall within the excluded categories 	6
2(b)	<ul style="list-style-type: none"> Lana must establish that Jonah did not have a fair reason to dismiss her. Also, that she meets preliminary requirements to bring a an unfair dismissal claim We are told she is an employee She has more than 2 years continuous employment Here is it 8 years she must also establish that Jonah's words constitute a dismissal e.g. Fussy v Brekkes (D & D) Ltd [1974] The potentially fair reason here would be her conduct Pushing Kevin into the lake Usually, a one-off incident is not enough unless it is serious E.g., T v Alidair Ltd [1978] Reasoned conclusion 	10
Question 2 Total:16 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> As this is a misconduct case, under British Home Stores Ltd v Burchell (1978) it must be established that Jonah believed that Nicola was guilty and that he had reasonable grounds for that belief based on a reasonable investigation he hired a computer expert to do this Under the ACAS Code of Practice, 1 Jonah must take steps to establish the facts he must confirm details of the problem in writing to Nicola he must give her advance notice to attend the disciplinary hearing and her right to be accompanied. He should tell her the decision Confirm right of appeal in writing. He should act promptly and consistently throughout. 	9
Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> Compensation Re-instatement re-engagement. 	3
Scenario Total: 40 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> Ashar would need to follow the Kempston Today's disciplinary procedure <p>or</p> <ul style="list-style-type: none"> those set out by ACAS He will need to conduct a thorough investigation and write to Lance detailing the allegations and inviting him to attend a disciplinary hearing. He should also inform Lance of his right to be accompanied to the meeting. Lance should be given the opportunity to respond to the allegations and he should be notified in writing the decisions of the hearing. Lance should also be given the opportunity to appeal the decision. All of this must be done promptly and consistently 	7

Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> • Celia could try to claim wrongful dismissal (s.86 Employment Rights Act 1996). • She has been summarily dismissed without any notice. • She should have received 3 months' notice as her contractual notice is higher than the statutory minimum. • She has not received any PILON. • However, Celia could have committed a fundamental breach which would allow her employer to terminate the contract. • Fighting at work • could amount to gross misconduct and would therefore justify a summary dismissal. • Usually, a single incident is unlikely to justify summary dismissal unless it is a serious crime/ Celia has been convicted of assault • reasoned conclusion 	10
2(b)	<p>Celia would be entitled to</p> <ul style="list-style-type: none"> • payment in lieu of the 3 months' notice • which would include the net wages or salary that she would have earned. • She would also be entitled to any arrears prior to the dismissal • the monetary value of her contractual benefits, • which would include the meal vouchers • private health care • gym membership. • Also, the net pay in lieu of any holiday entitlement not taken up to the date on which Celia would have left. • She would be unable to claim compensation for hurt feelings 	8
Question 2 Total: 18 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> • S.10 religion means any religion / lack of religion • s.10(2) belief is any religious or philosophical belief/ or lack or belief. • Nicholson v Grainger plc and others [2009] • defines belief as being genuinely held and not an opinion, • it must be a substantial aspect of human life. • It must attain a certain level of seriousness and importance within society • be worthy of respect. 	3

3(b)	<p>The first claim</p> <ul style="list-style-type: none"> • Mikhail has been subjected to direct discrimination • s.13 Equality Act 2010. • He has been treated less favourably because he has a strong belief in the environment. • Sandy has refused to pick up his coffee and calls him names. His belief is genuinely held. <p>The second claim would be</p> <ul style="list-style-type: none"> • harassment • s.26 • unwanted conduct relating to a protected characteristic. • Here, there is an intimidating and degrading environment. • He is being called names like 'tree-hugger' and told his beliefs are stupid • e.g. <i>In situ cleaning Co v Heads</i> [1995]. • reasoned conclusion 	10
Question 3 Total: 13 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> • The claimant has to establish a prima facie case • then the burden will shift to the employer to establish that discrimination did not occur • s.136 Equality Act 2010 	2
Scenario Total: 40 marks		