



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 6 – EMPLOYMENT LAW

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 November 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

5 candidates or less completed this exam. For this reason, Chief Examiner comments on overall and question-specific performance has not been included as the data is too limited for meaningful trend analysis.



SUGGESTED POINTS FOR RESPONSE**NOVEMBER 2023****LEVEL 3 UNIT 6 – EMPLOYMENT LAW****SECTION A**

| Question Number | Suggested Points for Responses | Marks (Max) |
|------------------------|---|--------------------|
| 1 | <p>The identification of any three of the following</p> <ul style="list-style-type: none">• Protection against unfair dismissal (providing they meet the eligibility criteria)• An entitlement to the minimum wage under the Minimum Wage Act 1998• A right to redundancy pay. (Providing they meet the eligibility criteria) <p>Credit is given for relevant alternatives.</p> | 3 |
| 2 | <p>An explanation of the following</p> <ul style="list-style-type: none">• Repudiation is where the employee has committed a fundamental breach• that goes to the root of the contract e.g., theft• Usually more than one incident is needed• unless it is grossly dishonest/ serious crime• E.g, Pepper v Webb 1969 | 5 |
| 3 | <p>Identification of any two of the following</p> <p>E.g.</p> <ul style="list-style-type: none">• Tattoos• Pyromania• Kleptomania• smoking | 2 |
| 4 | <p>An explanation of the following</p> <ul style="list-style-type: none">• After 1 month, 1 week owed up to 2 years employment• After 2 years, 2 weeks owed.• For every additional year, 1 more week is owed up to a maximum of 12 weeks• S86 | 4 |



| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------|---|-------------|
| 5 | <p>An explanation of the following</p> <ul style="list-style-type: none"> • S.19 EA 2010 • Employer has applied a provision, criteria or practice which discriminates against a protected characteristic • Puts a particular group at a disadvantage/puts the defendant at a disadvantage <p>Cannot be shown to be a proportionate means of achieving a legitimate aim</p> | 4 |
| 6 | <p>An explanation of the following</p> <ul style="list-style-type: none"> • Must be an Express term within the contract • Preventing employee working for a competitor after employment has ended • can be unlawful as it can restrict a person’s right to earn • must be reasonable regarding area, time, and purpose • must protect legitimate interests of employer • relevant case law e.g. Littlewoods Organisation Ltd v Harris [1978] • e.g. to protect trade secrets • other relevant example e.g. non-dealing clause | 5 |
| 7 | <p>An explanation of the following</p> <ul style="list-style-type: none"> • test is common law implied term time of the contract. • Officious bystander suggests a term both parties would say ‘oh of course’ • It implies terms into a contract on this ground if something is so obvious that it need not be stated. <p>Shirlaw v Southern Foundries (1939)</p> | 3 |
| 8 | <p>Identification of any two of the following</p> <p>e.g. Where a person</p> <ul style="list-style-type: none"> • Has asserted a right not to be discriminated against. • Has taken, or attempted to take, leave for family reasons, • Is working a zero-hour contract has been dismissed for working for another employee (exclusivity clause). <p>Credit other relevant examples</p> | 2 |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 9 | <p>An explanation of one of the following</p> <ul style="list-style-type: none"> the duty to account for all profits e.g. Boston Deep Sea Fishing & Ice Company v Ansell (1888), the duty to respect trade secrets and customers. e.g. Faccenda Chicken Ltd v Fowler 1986 <p>credit is given for other relevant examples and case law</p> | 2 |
| Section A Total: 30 marks | | |

Section B - Scenario 1

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|--|-------------|
| 1(a) | <p>Identification of the following</p> <ul style="list-style-type: none"> a physical or mental impairment the impairment has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities. | 3 |
| 1(b) | <p>Explanation of the following</p> <ul style="list-style-type: none"> Miles has a physical impairment His face is disfigured <p>This would be considered substantial as it is more than minor or trivial.</p> <ul style="list-style-type: none"> He can no longer do what he could do before the impairment E.g. Paterson v Commissioner of Police for the Metropolis (2007). It is considered long term, as it is permanent. It also affects his ability to carry out day-to-day activities such as speaking for long periods of time. Para 6 sch1 Equality Act (EA)2010 specifically includes cancer and disfigurement as a disability even if does not affect a person's day-to-day activities | 10 |
| Question 1 Total: 13 marks | | |
| 2(a) | <p>Identification of the following</p> <ul style="list-style-type: none"> the effectiveness of the change the practicality of the adjustment The cost of the adjustment. | 3 |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 2(b) | <p>Explanation of the following</p> <ul style="list-style-type: none"> • S.21 defines a failure to provide reasonable adjustments as a form of discrimination. • Changing the timetables will be effective • Miles will be able to perform his duties • He will not have to speak for long periods of time • It might not be practical to change the timetables • This would depend on all the circumstances. • It is not discrimination to treat a non-disabled person less favourably than a disabled person • even if the other tutors requested the same treatment • Olaf could refuse their requests • e.g., Archibald v Fife Council (2004) | 9 |
| Question 2 Total: 2 marks | | |
| 3 | <p>Explanation of the following</p> <ul style="list-style-type: none"> • Miles would be able to claim harassment • s.26 EA2010. • This is because he has received unwanted conduct • in relation to a protected characteristic • which has violated his dignity. • S6 • Disability • The effect of the name calling has created a degrading and humiliating workplace • e.g. Insitu Cleaning v Heads (1995) | 8 |
| 4 | <p>Explanation of the following</p> <ul style="list-style-type: none"> • Miles is an employee of Tutorz • and he has been dismissed • because of his disability, • this is an automatically unfair reason for dismissal • there is no qualifying period of service in this situation. • Miles will need to bring his claim within 3 months • of the effective date of dismissal. • He is likely to be successful | 7 |
| Scenario Total: 27 marks | | |

Section B - Scenario 2

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|--|-------------|
| 1 | likely to be an employee because: <ul style="list-style-type: none"> • He worked there for 3 years • Personal service is required • His brother is not allowed to cover for him • Given designated duties/told what to do • E.g Ready Mixed Concrete | 3 |
| 2(a) | <ul style="list-style-type: none"> • Hamilton would need to show a breach of contract had occurred • dismissed with less than the statutory notice period or no notice/ Pilon • Hamilton was given no notice/ or Pilon • That the dismissal was not justified • he has not repudiated the contract • And that he has suffered a loss/ not received payment • It appears he could bring a claim • However, claim can be defended if Iris can show he repudiated his contract/ committed a fundamental breach • Breach would need to be serious • Explanation as to whether leaving the locker open was serious. | 10 |
| 2(b) | <ul style="list-style-type: none"> • Damages /compensation equal to notice period. • 3 weeks statutory minimum • Unless more provided for in the contract • Outstanding holiday pay • £1,050 | 4 |
| 2(c) | <ul style="list-style-type: none"> • Cannot claim • Johnson v Unisys 2001 | 2 |
| Question 2 Total: 16 marks | | |
| 3(a) | <ul style="list-style-type: none"> • S94 ERA • He must be an employee • Likely to be employee • Based on multiple test • Dismissed -Told no longer required to work there • He has the continuous employment 3 years • S108 ERA • As long as brings within 3 months • will meet criteria | 8 |

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|---|-------------|
| 3(b) | <ul style="list-style-type: none"> • Potential fair reason for dismissal • Conduct was unsatisfactory/ substantive reason • Leaving the security unit unlocked • Usually has to be serious such as theft etc • Employer usually have to show a pattern of conduct • He has never been disciplined before • Disciplinary procedure may specify this is gross misconduct • Conclusion | 7 |
| Question 3 Total: 15 marks | | |
| 4(a) | <ul style="list-style-type: none"> • Basic • Compensatory • Additional award | 3 |
| 4(b) | <ul style="list-style-type: none"> • Re-engagement • Reinstatement | 2 |
| 4(c) | Compensatory | 1 |
| Question 4 Total: 6 marks | | |
| Scenario 2 Total: 40 marks | | |

Section B - Scenario 3

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|---|-------------|
| 1(a) | <p>A summary dismissal occurs where the employer.</p> <ul style="list-style-type: none"> • dismisses the employee immediately • usually for gross misconduct • e.g., fighting in the workplace • The dismissal must be justified • or it could lead to a claim for wrongful dismissal | 4 |
| 1(b) | <p>Constructive dismissal is.</p> <ul style="list-style-type: none"> • where the employer has committed a fundamental breach • which has gone to the very root of the employment contract • effectively forcing the employee to resign • relevant example e.g., demotion | 4 |
| 1(c) | <p>Conroy may bring a claim for constructive dismissal if he can show that</p> <ul style="list-style-type: none"> • it is virtually impossible for him to continue in his role • <i>Western Excavating Ltd v Sharp (1987)</i> • He would do this by showing that Nahid has breached an implied term • duty of trust and confidence / e.g. demotion • This is a fundamental term • At the time of the reprimand the door was open so that everyone could hear • Humiliation • Conroy's resignation was a direct response to this • <i>Ogilvie v Neyrfor-Weir Ltd (2003)</i> | 8 |
| Question 1 Total:16 marks | | |
| 2(a) | <p>Conroy could have a claim based on</p> <ul style="list-style-type: none"> • direct discrimination. • s13 ERA. • when someone treats you differently than another person in a similar situation because of your age. • Age is a protected characteristic • under s.5 Equality Act 2010 • It is based on age ranges • due to the comments made regarding his age. • one-off comment is sufficient to bring an action • E.g. <i>Insitu Cleaning Co Ltd v Heads (1995)</i> | 9 |
| 2(b) | <p>If Conroy is successful in his claim, the remedies available to him could include:</p> <ul style="list-style-type: none"> • a declaration • a recommendation • compensation | 3 |
| Question 2 Total: 12 marks | | |



| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|--|-------------|
| 3 | <ul style="list-style-type: none"> • Nahid is not allowed to deduct pay from Conroy’s wages <p>Unless he is authorised to do by:</p> <ul style="list-style-type: none"> • Statute • e.g., tax and NI • court order • contract • Conroy <ul style="list-style-type: none"> • Deductions that do not fall within these categories generally cannot be deducted <p>Ss13-27 Employment Rights Act 1996.</p> | 8 |
| 4 | <ul style="list-style-type: none"> • Nahid is not obliged to write a reference • Spring v Guardian Assurance plc 1994 • if he does, it must be prepared with care and skill • or he will be liable for financial losses if prepared negligently | 4 |
| Scenario 3 Total: 40 marks | | |