

Title:	(Unit 19) The Practice of Employment Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES	ASSESSMENT CRITERIA	KNOWLEDGE, UNDERSTANDING AND SKILLS
THE LEARNER WILL:	THE LEARNER CAN:	
1. Understand the law on restraint clauses arising from express and implied terms of the employment contract	1.1 Explain the restraint clauses which apply during employment	1.1 During employment, consideration of the implied duty of trust and confidence; <ul style="list-style-type: none"> • protection of intellectual property including confidential information and trade secrets; • use of garden leave.
	1.2 Explain the main express and implied post-termination restraints	1.2 The four types of restrictive covenants: definitions and purpose of non-competition, non-solicitation, non-poaching and non-dealing; <ul style="list-style-type: none"> • the concept of implied terms with a particular focus on the implied term of confidentiality.

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	<p>1.3 Analyse the enforceability of these post-termination restraint clauses</p>	<p>1.3 Enforceability of restrictive covenants;</p> <ul style="list-style-type: none"> • criteria which must be satisfied to achieve enforceability, including legitimate interests to protect, and being no wider than necessary to protect the employer's business interest; <u>Richard Baker Harrison Ltd v Brooks and Others</u> – [2021] all ER (D) 94, judicial interpretation of restrictive covenants, good faith obligations and post-termination restrictions. • reasonableness in terms of time, area and nature of information protected. Consideration of appropriate forum for a breach of restrictive covenant claim; • remedies include injunctions and damages for breach of restrictive covenants.
	<p>1.4 Analyse the relationship between post-termination restraint clauses and any garden leave clause</p>	<p>1.4 Definition of garden leave clauses;</p> <ul style="list-style-type: none"> • importance of an express clause, and their purpose and effect, if any, on restrictive covenants.
	<p>1.5 Analyse a given legal situation on restraint clauses in order to offer practical advice and assistance</p>	<p>1.5 Analysis of a complex scenario to offer advice and assistance, e.g. drafting amendments to a basic restrictive covenant to rectify deficiencies in its enforceability (in the case of non-solicitation clauses, limitation to specific customers within a specified period prior to the employee's departure;</p> <ul style="list-style-type: none"> • drafting must bear in mind the operation of the blue pencil test); • briefly identifying a wrongful dismissal to the extent necessary to advise upon its effect on a restrictive covenant (i.e. basic definition of a wrongful dismissal and concept of repudiatory breach and its effect on restrictive covenants; • considering the possibility that confidentiality covenants may survive a repudiatory breach).

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<p>2. Understand the roles of policy and procedure in supplementing the employment contract</p>	<p>2.1 Describe core policies and procedures within the organisation</p>	<p>2.1 Identifying core policies and describe their function:</p> <ul style="list-style-type: none"> • disciplinary, dismissal and grievance, • internet and communications use (including the use of social media) • equal opportunities (including anti-harassment and bullying) • whistleblowing • sickness absence • health and safety • family friendly policies and flexible working.
	<p>2.2 Explain the reasons for core policies and procedures</p>	<p>2.2 The importance of preventing claims arising by the adoption, implementation and review of a comprehensive up to date company handbook;</p> <ul style="list-style-type: none"> • contrast between contractual and non-contractual provisions.
	<p>2.3 Explain the importance of detailed disciplinary and grievance policies and procedures</p>	<p>2.3 The difference between disciplinary and grievance cases: definitions under s13 Employment Relations Act 1999;</p> <ul style="list-style-type: none"> • the importance of detailed disciplinary and grievance policies and procedures: e.g. promoting orderly employment relations and fairness and consistency in the treatment of employees; communicating to employees what behaviour employers expect from them; • dealing with situations where employees break disciplinary rules or do not meet their employer's expectations; • including what constitutes gross misconduct when using social media at work and updating bullying and harassment at work policy; • sanctions imposed by tribunals when either employer or employee does not follow the disciplinary and grievance procedure in relevant cases.

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	<p>2.4 Explain the effective use of detailed disciplinary and grievance policies and procedures</p>	<p>2.4 Reference to ACAS guidance on core provisions of policy, such as, e.g. the disciplinary policy should be in writing;</p> <ul style="list-style-type: none"> • it must be non-discriminatory. • deal with matters promptly and confidentially; • tell employees what disciplinary action might be taken; • the levels of management with the authority to take disciplinary action, appeal procedure, etc
	<p>2.5 Analyse a given legal situation on the roles of policy and procedure in employment law in order to offer practical advice and assistance</p>	<p>2.5 Analysis of a complex scenario to offer advice and assistance.</p>
<p>3. Understand the law and procedure of unfair dismissal</p>	<p>3.1 Identify the qualifying requirements for an unfair dismissal claim and whether there was a dismissal</p>	<p>3.1 Application of the preliminary qualifying requirements and s95 of the Employment Rights Act 1996 regarding whether there was a dismissal.</p>
	<p>3.2 Evaluate the five potentially fair reasons for dismissal under section 98 Employment Rights Act 1996</p>	<p>3.2 The five potentially fair reasons under s98 ERA 1996 (capability;</p> <ul style="list-style-type: none"> • conduct; • redundancy; • statutory illegality; • and some other substantial reason).

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<p>3.3 Explain when an automatically unfair dismissal arises</p>	<p>3.3 Recognition and application of automatically unfair reasons for dismissal;</p> <ul style="list-style-type: none"> • reasons include whistleblowing • dismissal due to raising health and safety concerns • pregnancy • time off for dependants or exercising statutory rights. Workers will be able to claim protection from detriment or dismissal in relation to whistleblowing if they reasonably believe their disclosure is in the public interest. the requirement of disclosure in good faith has been abolished. if disclosure is made in bad faith, tribunal can reduce award by up to 25%, Public Interest Disclosure Act 1998.
<p>3.4 Explain when a dismissal will be fair in all the circumstances taking into account the procedure followed</p>	<p>3.4 Relationship between potentially fair reasons and fairness in all the circumstances, including the band of reasonable responses of the employer derived from <u>Iceland Frozen Foods v Jones</u> (1982) and <u>HSBC Bank v Madden</u> (2001);</p> <ul style="list-style-type: none"> • to include the role of procedure in considering unfair dismissal claims; <u>British Homes Stores v Burchell</u> (1978) in relation to misconduct cases, the intended use of protected conversations but not in automatically unfair dismissals. • procedural fairness and draft investigations, <u>Dronsfield v University of Reading</u> (2019) • serious allegations of misconduct with severe consequences require a higher standard of investigation, <u>Hargreaves v Manchester Grammar</u> (2018).

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<p>3.5 Explain the provisions of the ACAS code of practice and statute on disciplinary and grievance matters</p>	<p>3.5 ACAS Code can be taken into account by employment tribunals in deciding whether employers have acted properly in connection with unfair dismissal claims;</p> <ul style="list-style-type: none"> • contents of the revised code; • the Code is the key guidance governing management of disciplinary and grievance situations; • it lays out what needs to be followed before contemplating a dismissal; • e.g. use of informal procedures first, where some form of formal action is needed what action is reasonable will depend on all the circumstances, employers and employees should do all that they can to resolve disciplinary and grievance issues in the workplace, an employee should be informed of the basis of the problem and have an opportunity to put their case, an employee has the right to be accompanied at any disciplinary or grievance meeting including the statutory provisions governing the right to be accompanied (Employment Relations Act 1999 s10(1)(b)) etc; consequences of failure to allow accompaniment: an employee should be allowed to appeal against any formal decision made; good practice to keep written records during disciplinary and grievance cases.
<p>3.6 Explain the consequences of failure to handle dispute resolution effectively, including the effects on an unfair dismissal claim</p>	<p>3.6 Provisions of the Employment Act 2008 concerning dispute resolution.</p> <ul style="list-style-type: none"> • the rationale of <u>Polkey v AE Dayton Services Limited</u> (1988); • discretionary powers on tribunals to amend awards if parties have failed to comply with the ACAS Code including increase or reduction of compensation by 25%; • consequences on an unfair dismissal claim if no fair procedure followed, including acting outside the band of reasonable responses and following poor procedure.

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<p>3.7 Identify the remedies available to an employee when the employer implements an unfair dismissal</p>	<p>3.7 The function of the Employment Tribunal;</p> <ul style="list-style-type: none"> • compensation (consideration to include calculation of basic award and advice on compensatory elements including the potential 25% increase or decrease to the awards and the role of mitigation); • awareness of further remedies of reinstatement and reengagement. Compensatory award in unfair dismissal limited to maximum compensatory award or 52 weeks' pay. Ensure understanding of difference between "aggravated" damages and "exemplary" damages. Whistle blowing cases compensatory award is uncapped <u>Virgo Fidelis Senior School v Boyle</u> (2004) IRLR 268. EAT. • the Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment of Schedule A2) Order 2025 (in force from 20 January 2025). Employment Tribunals can increase or reduce any protective award they make by up to 25% if one of the parties has unreasonably failed to comply with a relevant Code of Practice – which shall include the new Code of Practice on dismissal and re-engagement.
<p>3.8 Analyse a given legal situation on the law and procedure of unfair dismissal in order to offer practical advice and assistance</p>	<p>3.8 Analysis of a complex scenario to offer advice and assistance; e.g. simple compensation calculations.</p>

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<p>4. Understand the law and procedure on a transfer of a business or part of a business from one organisation to another</p>	<p>4.1 Explain what a Transfer of an Undertaking is and why there is a need for employee protection when such a transfer takes place</p> <p>4.2 Explain when TUPE applies to a business situation</p>	<p>4.1 Definition of transfer of an undertaking;</p> <ul style="list-style-type: none"> the overall nature of the protection afforded by the provisions of Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE 2006'); the common law position before statutory intervention. <p>4.2 The potential range of TUPE transfer situations including definition of a relevant transfer (TUPE 2006 regulation 3) and application to: business transfers (including whether there is an identifiable economic entity), changes of service provision including outsourcing, first generation contracting out, second generation contracting out, taking services back in house; the activities carried on after the change in service provision must be "fundamentally or essentially the same" as those carried on before it (Collective Redundancies and Transfer of Undertakings (Protection of Employment) Amendment) Regulations 2013);</p> <ul style="list-style-type: none"> the effect of the TUPE regulations, understanding that there can be a transfer of an undertaking for the purposes of TUPE 2006 even though: there is no contractual relationship between the alleged transferor and the alleged transferee, there is no transfer of physical assets, only part of an undertaking is transferred; guidance taken from case law: for example, principles from <u>Spijkers Gebroeders v Benedik Abbatoir CV and Alfred Benedik en Zonen BV, ECJ</u> (1986) ECR 1119 (Spijkers case) and <u>Cheesman v Brewer Contracts</u> EAT (2001) IRLR 144.
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	<p>4.3 Explain the legal consequences following a relevant transfer</p>	<p>4.3 Legal consequences including: dismissals: effect of relevant transfer on contracts of employment and preservation of continuity of employment (TUPE 2006 regulation 4);</p> <ul style="list-style-type: none"> • preservation of terms and conditions of those employees who are transferred (TUPE 2006 regulation 4); • limited opportunity for the transferee or transferor to vary the terms and conditions of employment (TUPE 2006 regulation 4, including regulation 9 - insolvency); • protection from dismissal before or after a relevant transfer (TUPE 2006 regulation 7); • information and consultation requirements: duty to inform and consult representatives (TUPE 2006 regulation 13 and 15); • protective award imposed on employer if collective consultation procedure is not complied with; effect of employer being insolvent.
	<p>4.4 Define an economic, technical or organisational reason and describe its effect in a transfer situation</p>	<p>4.4 Definition: economic, technical or organisational (ETO) reason and the importance of the fact the ETO reason must entail changes in the workforce;</p> <ul style="list-style-type: none"> • ETO reason includes change in the location of the employer, Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013; • the ETO reason must relate to the transferor's future conduct of the business (e.g. <u>Hynd v Armstrong and Others</u> (2007)); • effect on protection from dismissal if an ETO reason applies (regulation 7); • effect of an ETO on attempts to vary terms, i.e. the variation will be void if the sole or principal reason for the variation is the transfer itself; • or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce (regulation 4 (4)); • <u>Spaceright Europe Limited v Baillavine</u> (2011) EWCA CIV 1565.

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<p>5. Understand and apply the statutory minimum provisions relating to family friendly provisions</p>	<p>5.1 Explain the right to time off for ante natal care.</p>	<p>5.1 Ante natal care: outline right to time off for ante natal care, when an employer can refuse and remedies for unreasonable refusal;</p> <ul style="list-style-type: none"> • s55 Employment Rights Act 1996. An expectant father or the partner (including same sex) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to 2 of her antenatal appointments.
	<p>5.2 Explain the key features of maternity and paternity leave</p>	<p>5.2 Maternity leave: outline compulsory maternity leave (ERA 1996 s72 and Maternity and Parental Leave Regulations 1999 regulation 8);</p> <ul style="list-style-type: none"> • the qualifying criteria for ordinary and additional maternity leave; • notice to be given; • the extent of ordinary leave, i.e. 26 weeks (Maternity and Parental Leave Regulations 1999 regulation 7); • when maternity leave commences; • notifying an employer re the end date of maternity leave; • the extent of additional maternity leave; • contract of employment continues throughout ordinary and additional maternity leave - differences between rights during ordinary and additional leave; • the right to the continuation of rights and benefits of the contract (remuneration excepted) and the right to return to work; Maternity and Paternity Leave (Amendment) Regs 2002; • Employment Act 2002 and Part VIII ERA 1996; • s18 Equality Act 2010, pregnancy and maternity discrimination: work cases and the insertion of a maternity equality clause under s73. Paternity Leave: statutory paternity leave (Employment Act 2002 s1, ERA 1996 S80A Paternity and Adoption Leave Regulations 2002); • amount; • when taken; • who can take paternity leave;

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- entitlement (must be an employee but can be a part-time employee);
- notice to be given;
- qualification (the employee must have been in continuous employment with their employer for 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth); entitlement while absent on statutory paternity leave to all the benefits and obligations, other than entitlement to wages or salary, to which he would be entitled if at work;
- entitlement to return to job at end of paternity leave; ss73-76 Equality Act 2010. under part 8 of the Equality Act fathers now have right to unpaid time off work to attend two antenatal appointments with a pregnant woman. Right is available to husband, civil partner, or partner and intended parents in a surrogacy situation.
- the Neonatal Care (Leave and Pay) Act 2023 (effective 6 April 2025). Additional statutory leave entitlements for parents, and care givers, when a baby has received medical or palliative neonatal care for at least seven consecutive days within the first 28 days after birth.

5.3 Explain when statutory maternity and paternity pay will be paid and the current rates

5.3 Maternity and Paternity Pay: qualifying criteria for Maternity and Paternity leave, the level of remuneration and both rates of Statutory Maternity and Paternity Pay;

- ss164-171 Social Security Contributions and Benefits Act 1992.

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<p>5.4 Explain the remedies available to an employee when an employer fails to honour maternity or paternity rights</p>	<p>5.4 Remedies available to an employee when the employer fails to honour maternity or paternity rights: dismissal of a pregnant employee will be automatically unfair dismissal under s18 Equality Act 2010, shared parental leave under the Shared Parental Leave Regulations 2014, or time off for helping dependants under ERA 1996 s57A, failure to return to work at the end of maternity leave if the employer had not given her the notice of the end date of her maternity leave, selection for redundancy on any of the grounds above is also automatically unfair dismissal;</p> <ul style="list-style-type: none"> • dismissal of a male employee will be automatically unfair dismissal if he is dismissed because he took or sought to take paternity leave (or is selected for redundancy for that reason) (see Paternity and Adoption Leave Regulations 2002 regulation 29); • other remedies include: the right not to be subjected to a detriment (ERA 1996 s47C and s57A); • a female employee who has suffered a detriment in contravention of the rules noted above can make a complaint to an Employment Tribunal (ERA 1996 s48); • compensation (ERA 1996 s.49); • the right not to be subjected to a detriment for male employees: ERA 1996 s47c and Paternity and Adoption Leave Regulations 2002 SI regulation 28.
<p>5.5 Explain the current right to request flexible working and proposed extensions to that right</p>	<p>5.5 The right to request flexible working: awareness of rationale (that it is just a right to request and not a right to work flexibly) and qualifying criteria;</p> <ul style="list-style-type: none"> • qualifying requirements; • nature of the flexibility (e.g. hours, times, place of work); • employers will have a duty to consider all requests in a reasonable manner; • employers will have the right to refuse requests on business grounds; • consequences of an employers' refusal; • remedies if unfairly refused; • right to appeal; • s80F ERA 1996.

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<p>5.6 Explain the right to parental leave and time off for dependants</p>	<p>5.6 Parental leave for employees to take time off work to look after a child's welfare. Leave can be taken up to a child's 18th birthday. Shared parental leave and shared statutory pay;</p> <ul style="list-style-type: none"> • qualifying criteria; an employed mother will continue to be entitled to 52 weeks of Maternity Leave and 39 weeks of statutory maternity pay or maternity allowance. An eligible mother can end her maternity leave early and, with her partner or the child's father, opt for Shared Parental Leave instead of Maternity Leave. If they both meet the qualifying requirements, they will need to decide how they want to divide their Shared Parental Leave and Pay entitlement. Adopters have the same rights as other parents to shared parental leave and pay parents can choose how they allocate shared parental leave during the first year of the child's birth both men and women are entitled to it in addition to paternity and maternity leave. it is not discriminatory to pay men on shared parental leave less than women on maternity leave; the purposes of the two types of leave greatly differ, <u>Ali v Capita Ltd</u>; <u>Hextall v CC of Leicestershire Police</u> (2019) • Time off for dependants: all employees are entitled to a reasonable amount of unpaid time off work to deal with emergencies involving a dependant (Employment Rights Act 1996 s57A); • right not to be dismissed or victimised for doing so; • if a person is dismissed, including being selected for redundancy, for exercising or seeking to exercise this right, the dismissal will be automatically unfair (ERA 1996 s99); • time off can be taken in order to take action to provide assistance when a dependant falls ill, gives birth, is injured or dies; • definition of dependant; • an employee who is unreasonably refused permission to take time off can take action in the employment tribunal for compensation.
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		<ul style="list-style-type: none"> The Parental Bereavement (Leave and Pay) Act 2018 rights of parents who lose a child under 18 years of age.
	5.7 Analyse a given legal situation on family friendly provisions in order to offer practical advice and assistance	5.7 Analysis of a complex scenario to offer advice and assistance.
6. Understand how employees are protected from discrimination under the Equality Act 2010	6.1 Analyse the nine types of protected characteristics and six types of discrimination arising from the Equality Act 2010	6.1 S4 Equality act 2010 introduces the concept of protected characteristics covering gender, race, disability, religion or belief, sexual orientation, pregnancy and maternity, gender re-assignment, marriage and civil partnership, and age including direct discrimination s13, indirect discrimination s19, disability related discrimination s15; <ul style="list-style-type: none"> failure to make reasonable adjustments s20; harassment s26 and victimisation s27 and concerning the liability of employers under s109 and s110. Also discrimination by perception (<u>English v Sanderson Blinds Ltd (2008)</u> or association (<u>Coleman v Attridge Llaw (2008)</u>)). <u>M Forstater v CGD Europe and Others: 2200909/2019-</u> ‘gender critical’ beliefs as a ‘philosophical belief’ for protection under section 10 of the Equality Act 2010. Equality Act 2010 (2024 updates) UK employers have a legal obligation to take ‘reasonable steps’ to prevent sexual harassment at work. previously, the emphasis was on addressing incidents of sexual harassment after they had occurred. Employment Tribunals can increase compensation awards by up to 25% if the company didn’t take steps to prevent the sexual harassment from occurring.

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<p>6.2 Explain the provisions on equal pay under the Equality Act 2010 and the defences available</p>	<p>6.2 S66 EA 2010 concerns the introduction of the sex equality clause;</p> <ul style="list-style-type: none"> • the need for a comparator s79; • sex discrimination in relation to contractual pay s71; • relevant types of work s64; • equal work s65 (like work, work rated as equivalent to the comparator's work and work of equal value); discussions on pay s77; <p>defence of material factor s69 (location (<u>NAAFI v Varley</u> (1976)) and economic necessity (<u>Rainey v Greater Glasgow HB</u> (1987)). The Small Business, Enterprise & Employment Act 2015 provides that all organisations that employ more than 250 people are to publish details of any gender pay gap. pay ratio reporting now extended to UK listed companies with more than 250 employees to publish and justify pay differences, the pay ratio, between their chief executive and their average UK worker, Companies (Miscellaneous Reporting) Regulations 2018.</p> <ul style="list-style-type: none"> • <u>ASDA Stores Ltd v Brierley and Others</u> [2021] IKSC 10, equal pay comparators.
<p>6.3 Explain the various types of disability discrimination under the Equality Act 2010</p>	<p>6.3 S6 Equality Act 2010 defines who will have the protected characteristic of disability emphasising what will constitute a disability; s4 concerns direct discrimination;</p> <ul style="list-style-type: none"> • s15 concerns discrimination arising from disability (eg: the need to take disability related absence) can be justified by the employer provided it is a proportionate means of achieving a legitimate aim; • s19 concerns indirect discrimination; • s20 concerns duty to make reasonable adjustments (e.g. <u>Wade v Sheffield Hallam University</u> (2013) and examples of what such adjustments are e.g. <u>Chief Constable of South Yorkshire Police v Jelic</u> (2013); actual or constructive knowledge of disability, <u>Aldeh v Churches Housing Association</u> (2019) • Menopausal symptoms can be a disability under the EA 2010 definition, <u>Rooney v Leicester City Council</u> EA-2020-000070-DA; EA- 2021-000256-da.

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		<ul style="list-style-type: none"> • s26 concerns harassment and s27 concerns victimisation; • burden of proof, and limited defences. Harassment to include harassment based upon a protected characteristic and harassment based upon rejection or acquiescence to sexual conduct; • bullying and harassment claims brought by employees. Discrimination by association e.g. under <u>Coleman v Attridge law</u> (2008); harassment claims are highly fact sensitive, <u>Evans v Xactly</u> (2018). • <u>Allay (UK) Ltd v Gehlen</u> EAT/0331/20 the ‘reasonable steps’ defence requires that an employer’s diversity training is updated and current.
	6.4 Explain the statutory provisions governing retirement and the law on age discrimination	6.4 Employer justified retirement ages; <ul style="list-style-type: none"> • what may amount to a legitimate aim and whether the means used to achieve that aim are proportionate; Equality Act 2010. Relevant case law includes <u>Seldon v Clarkson Wright & Jakes</u> (2013) where the supreme court justified a retirement age of 65. Employer retirement policy and enforced retirement age of 67 years were a proportionate means of achieving a legitimate aim, <u>Prof J Pitcher v University of Oxford</u> (2019).
	6.5 Explain the legal consequences following a breach of discrimination legislation	6.5 Enforcement of discrimination legislation including procedure, judicial mediation, time limits and remedies including compensation, injuries to feelings and quantum; <ul style="list-style-type: none"> • declaration of rights, effectiveness of remedies, <u>S Macken v BNP Paribas London Branch</u>: 2208142/2017 and others, aggravated damages

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	6.6	Analyse a given legal situation on employee protection from discrimination in order to offer practical advice and assistance	6.6	Analysis of a complex scenario to offer advice and assistance e.g. advise on the relevant band of compensation for injury to feelings under the Vento and Da’Bell guidelines; <ul style="list-style-type: none"> • drafting of ET1/ET3 forms in relation to a discrimination claim.
7.		Understand the statutory requirements of forming binding settlement agreements	7.1	Explain the purpose and effect of settlement agreements
	7.1	Explain the purpose and effect of settlement agreements	7.1	Understanding of the importance of settlement agreements: COT3 (s18 of the Employment Act 1996) as a way of resolving employment disputes; <ul style="list-style-type: none"> • an understanding of without prejudice negotiation and privilege. Section 111A can also apply to offers of a settlement agreement against the background of an existing dispute, although in such cases the ‘without prejudice’ principle can also apply.
	7.2	Explain the statutory requirements for a valid settlement agreement	7.2	Application of S111A of the ERA 1996 concerning the need for an independent legal adviser, the requisite insurance, and meeting all the requirements concerning settlement agreements: e.g. the agreement must be in writing, the agreement must relate to the particular proceedings, the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an Employment Tribunal, the requirement that the adviser must be a relevant independent adviser Employment Rights Act 1996 s203 (3a): Employment Rights (Dispute Resolution) Act 1998 s9; <ul style="list-style-type: none"> • the adviser must be covered by a professional indemnity insurance in respect of the advice given; • the adviser must be identified in the agreement; • the agreement must state that the above conditions are satisfied; s144 Equality Act 2010 retains the ability to contract out of terms under a qualifying settlement contract under s147. include

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		exceptions to S111a and when you cannot use this protection i.e. claims relating to automatically unfair reasons, union membership, whistleblowing and asserting any statutory right.
	7.3 Analyse a given legal situation on settlement agreements in order to offer practical advice and assistance	7.3 Analysis of a complex scenario to offer advice and assistance; <ul style="list-style-type: none"> • e.g. drafting of sections of settlement agreements to ensure compliance with s203 s111a of the ERA 1996; • drafting adviser's certificate to settlement agreement; drafting COT3 agreement.
8. Understand the law and procedure of filing an employment claim in the tribunal or the civil courts	8.1 Explain the jurisdiction of employment tribunal and civil courts for a number of key claims	8.1 The main provisions of the extension of jurisdiction (England and Wales) order 1994 and s120 Equality Act 2010; <ul style="list-style-type: none"> • most employment cases will take place within the tribunal system usually three month less one day under s123, note that if it relates to a redundancy payment or a breach of an equality clause or rule the period is six months. <p>Ordinary civil courts have jurisdiction over a smaller number of employment matters including breach of contract claims including wrongful dismissal, claims concerned with breaches of restrictive covenants, intellectual property claims, such as copyright or patent matters, personal injury claims for example based on breach of the implied contractual term that the employer must take care of the employee's health and safety; note: the employment tribunal also has jurisdiction to deal with contractual claims such as wrongful dismissal claims up to a £25,000 limit.</p>

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<p>8.2 Explain the main time limits for lodging claims in the tribunal and the civil courts and the rules governing extensions of those time limits in the tribunal</p>	<p>8.2 The time limits for wrongful dismissal in different jurisdictions, unfair dismissal and a selection of other claims including claims for statutory redundancy payments;</p> <ul style="list-style-type: none"> • an understanding of the circumstances in which time may be extended (including the fixed three-month extension until repealed) and the extensions available under the not reasonably practicable and just and equitable tests. ACAS early conciliation. Impact on time limits if conciliation is taken up – clock stops.
<p>8.3 Explain the purpose of the ET1 and ET3 form</p>	<p>8.3 Understanding the purpose of the forms;</p> <ul style="list-style-type: none"> • the main elements of the forms.
<p>8.4 Explain the processes and orders available in the tribunal and the appropriate use of interim procedures</p>	<p>8.4 Key stages of a tribunal claim including some core aspects of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as amended;</p> <ul style="list-style-type: none"> • for example, preliminary hearing, default judgments, striking out, witness orders and requests for documents; • preparation of witness statements, and actual processes in the tribunal; • evidential issues and use of Judicial Mediation in any type of claim where the hearing will be three days or more. Analysis of the reasoning in <u>R (UNISON) v Lord Chancellor</u> (2017) UKSC 51 and the impact on employment tribunal access.

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<p>8.5 Explain jurisdiction, time limits for appeals and reviews of a tribunal decision</p>	<p>8.5 Appeal lies with the Employment Appeal Tribunal (EAT), Court of Appeal and Court of European Justice on any question of law;</p> <ul style="list-style-type: none"> • no right of appeal from an employment tribunal's decisions on facts; • right to request review of an employment tribunal decision; • time limits for a review and appeal: 14 days for a review by the tribunal; • 42 days for an appeal. Need to complete a Notice of Appeal Form and send it to the tribunal office by email, fax or post.
<p>8.6 Analyse a given legal situation with respect to an employment claim in order to offer practical advice and assistance</p>	<p>8.6 Analysis of a complex scenario to offer advice and assistance, e.g. completing a claim or response in the employment tribunal;</p> <ul style="list-style-type: none"> • completion of the form et1 or et3 based on an unfair dismissal scenario; drafting a schedule of loss. role of conciliation up till a hearing. drafting letters, emails and memorandum.

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of 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)	N/A
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 delivery	1 September 2014

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