



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 4- Employment Law

Question paper

June 2023

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – **Blackstone's Statutes on Employment Law 2021- 2022, 31st edition, Richard Kidner, Oxford University Press, 2021.**
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

Answer at least one question from this section

1. The Equality Act 2010 allows employers to raise certain defences to otherwise discriminatory actions. These defences are often broadly interpreted, allowing for an employer to discriminate against an employee without due consequence.

Using case law, critically evaluate the statement above in relation to the defences available under the Equality Act 2010 for a claim of:

(a) Indirect discrimination:

- based on religion
- based on age.

(18 marks)

- (b) Failure to make reasonable adjustments for a disabled employee.

(7 marks)

(Total: 25 marks)

2. It is essential that an employer conducts a proper investigation prior to dismissing an employee for misconduct; particularly where the alleged misconduct is of a 'serious' nature. Courts and tribunals will not allow an employee to be without remedy where there is a dismissal without proper investigation.

Critically analyse **each of the elements** of the statement above.

(25 marks)

3. The remedies available for a successful claim of wrongful dismissal are both fair and far-reaching. However, the requirements that must be met for an employee to access these remedies are unduly strict.

Using case law, critically assess the statement above with regards to the requirements an employee must demonstrate for a successful claim of **wrongful dismissal and constructive dismissal**.

(25 marks)

4. Critically evaluate the judicial tests used to distinguish employees, workers and self-employed persons; including their application to the 'gig' economy.

(25 marks)

SECTION B

Answer at least one question from this section

Question 1

Aardvark Finds Ltd is a large company that specialises in the trade of rare coins. The company suffered financial losses over the last two years due to a decline in custom.

The directors of Aardvark Finds Ltd decided they would need to reduce company spending to allow the business to continue operating. It was decided that the customer services department of the business would need to be reduced; particularly as there were fewer customers to service. The customer service department had a total of 40 employees, all of whom performed the same job of answering customer queries and complaints. The minimum redundancies needed, to allow the company to recover financially, was determined to be 22 of these employees.

Twenty-two employees from the customer service department were selected for redundancy. All selections were made on the basis of the employee having more than one prior disciplinary warning, or persistent absences. None of these absences were authorised, nor were they requested on the basis of medical problems or childcare issues.

The HR Department of Aardvark Finds Ltd sent an email to each of the employees selected for redundancy inviting them to a meeting with their HR adviser. It was explained that the meetings would be 'private', and employees should attend alone. No further information was given in the emails sent out.

During these meetings, each employee was given 10 minutes with the company's HR adviser, at which time they were told they were being made redundant and the reasons behind their selection. The HR adviser gave employees the opportunity to ask as many questions as they wished, within the 10-minute meeting. Two weeks after these meetings, all employees selected were made redundant.

Advise Aardvark Finds Ltd if it has followed proper redundancy selection and consultation procedure and, if not, the potential remedies available against it.

(25 marks)

Turn over

Question 2

Madhuri has been employed by Image Control Ltd for the past 10 months as a project manager, she earns £52,800 per annum. Madhuri and her wife, Patricia, were told last month that their application to adopt a child had been successful. The couple jointly decided that Madhuri would be the one to take adoption leave.

The day following receiving confirmation of the adoption date, Madhuri sent her line manager, Katie, an email request for adoption leave. Within this request, Madhuri confirmed that the adoption would take place on 1 August, and she would like to start her leave from 31 July. Madhuri also forwarded a legal document from the adoption agency, confirming the adoption. Katie immediately replied to the email, approving Madhuri's request for leave.

Later that day, Katie saw Madhuri in the staffroom and congratulated her and 'her husband' on their adoption. Madhuri thanked Katie and told her that she and her 'wife' were adopting the child, not her 'husband'. Katie seemed surprised by this statement and told Madhuri 'Oh no, I never would have guessed you were gay, you don't seem that masculine'. Madhuri was offended by this comment but too stunned to respond in that moment.

The following day, Katie invited Madhuri to a meeting. At this meeting, Katie told Madhuri that her request for adoption leave had now been rejected as another member of staff was already taking leave in August. When Madhuri argued that the leave was essential as the adoption had been arranged, Katie told Madhuri to 'find yourself a husband and have a child of your own, then maybe you'll have better luck!'

Advise Madhuri as to whether:

(a) she made a proper application for adoption leave and her entitlement to adoption leave and paid adoption leave;

(16 marks)

(b) she has been discriminated against.

(9 marks)

[NOTE TO CANDIDATES: Do not consider remedies.]

(Total: 25 marks)

Question 3

David is 24 years old and has worked at Nice Nails10 Ltd as a nail technician for the past three years. David is paid £5 per hour and his wages have remained the same throughout his employment; he also receives a share of the tips received in the salon, and a daily free lunch in the staff canteen.

The products used in the salon can be toxic if inhaled in large doses, therefore Nice Nails10 Ltd provides all employees with a protective mask to wear when at work. David has never worn his mask as he does not like how it looks. The manager of Nice Nails10 Ltd, Lucy, is aware that David does not wear a mask. However, she does not instruct him to wear the mask, nor warn him of the risks of not wearing the mask. Nice Nails10 Ltd takes the view that, although it provides masks, it does not enforce such protective measures and the ultimate responsibility for personal safety lies with the individual employee.

One afternoon in July, the weather was particularly hot and sunny, and David left work early, without permission, so he could get a suntan. The next month, David saw that his wages for July were £200 less than usual. When he queried this with Lucy, he was told that a deduction of £80 was made to reflect him leaving work early on one afternoon in July, and a deduction of £120 was made to reimburse the company for overpayment of wages in his June payment.

David asked Lucy to send him an itemised statement showing these deductions, and the reasons why they were made. Lucy told him that she cannot provide this as Nice Nails10 Ltd does not issue such statements. Due to his wages being deducted in July, David was unable to pay his car payment and received a £25 penalty for failure to pay that bill.

Advise David if Nice Nails10 Ltd has breached his rights and, if so, the remedies available to him.

(25 marks)

Turn over

Question 4

Carlito's Clothes is a clothing business with 15 employees. Carlito's Clothes includes the following clause in the contracts of all its employees:

'Clause 5: all employees of Carlito's Clothes will be prohibited from working for any other clothing business, in any capacity, for 24 months after leaving the company. This restriction will cover a 50-mile radius from the location of employment.'

Li-Jung had worked at Carlito's Clothes for two years as an assistant to the managing director (MD) of the company. Li-Jung's duties included accompanying the MD to client meetings and taking notes. The notes taken by Li-Jung would often contain confidential information shared within these private meetings.

Li-Jung has a 14-year-old daughter. He was recently unable to accompany the MD to a meeting as his daughter had a doctor's appointment and he wanted to accompany her. The appointment had been scheduled for three weeks and Li-Jung had requested leave for the day. Although the request for leave was not granted, Li-Jung claimed it was 'an emergency' and he took the day off to accompany his daughter to her doctor's appointment. Carlito's Clothes issued Li-Jung with a formal written warning upon learning of him taking this leave.

To avoid any such issues in the future, Li-Jung decided to change his working hours so that he could have more time for his own responsibilities. Li-Jung sent an email to Carlito's Clothes containing the following request: **'I would like to change my working hours from 9am to 6pm, to 6am to 12pm. I am unable to continue working afternoons. Thank you'**.

The company declined this request on the basis that all company meetings, which the assistant to the MD needs to attend, are held in the afternoons.

Li-Jung was unhappy with this response and decided to leave his job; he emailed his employer informing them of his resignation. Carlito's Clothes replied, accepting the resignation, and reminding Li-Jung that he would remain bound by Clause 5 of his contract.

Advise Li-Jung whether:

- (a) he is bound by Clause 5; **(9 marks)**

- (b) he was entitled to 'emergency leave' to accompany his daughter to her doctor's appointment; **(8 marks)**

- (c) he made a valid request for flexible working, and if the reason given for refusal of the request is recognised under statute. **(8 marks)**

(Total: 25 marks)

End of the examination

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