



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 4 – EMPLOYMENT LAW\*

**Time allowed: 3 hours plus 15 minutes' reading time**

#### Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Employment Law 2018–2019, 28th edition, Richard Kidner, Oxford University Press, 2018.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

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**SECTION A**  
**(Answer at least one question from this section)**

1. Critically assess how effectively the Equality Act 2010 and other legislation, relating to shared parental leave, has contributed to the reduction of the gender pay gap.

**(25 marks)**

2. Critically assess how the Employment Rights Act 1996 defines 'redundancy' and how employees are protected if they are dismissed 'by reason of redundancy'.

**(25 marks)**

3. (a) Evaluate what a transferee in a relevant business transfer would acquire under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**(16 marks)**

- (b) Examine what employment protection is given to employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**(9 marks)**

**(Total: 25 marks)**

4. (a) Critically evaluate the employment protection given to agency workers and part-time workers.

**(17 marks)**

- (b) Examine how zero-hours contract workers are given employment protection.

**(8 marks)**

**(Total: 25 marks)**

**Turn over**

**SECTION B**  
**(Answer at least one question from this section)**

**Question 1**

Rachael was appointed as Head of English at Goodwode College (GC) in March 2016. GC is a secondary school for girls. Rachael has had a close friendship with Stan, who does not work at GC, since 2012. They had bought a cottage in Wales together, which they used as a holiday cottage. They had a joint bank account for transactions relating to the cottage. They both used the cottage extensively at weekends and for longer holidays. In October 2017, the police arrested Stan for stalking a female teenager. In February 2018, Stan was convicted of stalking. He received a restraining order.

Rachael did not disclose Stan's conviction to GC and remained close friends with him. They went on a four-week holiday to South America together in August 2018. In September 2018, GC became aware of the conviction and the relationship between them. A disciplinary hearing took place in early October 2018, where Rachael refused to accept that her relationship with Stan might pose a risk to pupils at the school and that her failure to disclose it had been wrong. GC confirmed Rachael's dismissal in writing on 30 October 2018. Her appeal to an appeals panel was dismissed on 29 November 2018.

Wayne is a caretaker at GC and has worked there for eight years. His work record has been excellent. At the end of last week, Wayne was told by his manager that his services are no longer required. No reason was given for this. Wayne received his wage packet with four weeks' notice pay. In Wayne's contract, there is a clause giving the employer the right to terminate the employment with immediate effect, by making a payment in lieu of notice.

Advise GC of any statutory dismissal claim that Rachael may bring and any contractual claim that Wayne may bring.

**NOTE: Do not discuss possible remedies.**

**(25 marks)**

## Question 2

Fleurison Limited is an accountancy firm based in Leeds. Chi-Sin is employed as a senior accountant at Fleurison Limited, specialising in tax advice for financial technology (FinTech) start-ups. He has worked there since 1 September 2011. Chi-Sin's employment contract includes the following clauses:

- '13.2 The Employee covenants with the Company that he will not, save with the prior written consent of the Company, during normal hours of work, devote any time to any business other than the business of the Company or to any public or charitable duty or endeavour, directly or indirectly, either alone or with or on behalf of any person, firm, company or entity and whether on his own account or as principal, partner, shareholder, director, employee, consultant or in any other capacity whatsoever.
- 13.3 The Employee covenants with the Company that he will not, save with the prior written consent of the Company, directly or indirectly, for six months following the Termination Date be engaged or concerned in any business supplying accountancy, tax and other similar services within a radius of 10 miles of Leeds Town Hall, either alone or with or on behalf of any person, firm, company or entity and whether on his own account or as principal, partner, shareholder, director, employee, consultant or in any other capacity whatsoever.'

Since September 2014, Chi-Sin has become increasingly frustrated by his lack of career prospects at Fleurison Limited. He started his own accountancy consultancy business, working after office hours and at weekends. His client base grew rapidly and he was approached by Gupto Limited to work for it as a partner. Gupto Limited is based in Bramhope, within 10 miles of Leeds. It is the only competitor of Fleurison Limited in providing tax advice to FinTech start-ups. Delighted with more attractive remuneration and a promotion, Chi-Sin resigned from Fleurison Limited two weeks ago and is now working at Gupto Limited.

Vinny had been working for Fleurison Limited for seven years, but in November 2018, he decided that it was necessary for family reasons to move to London, so he applied for a job there. Fleurison Limited agreed to provide a reference for him. However, the reference stated that there had been nine complaints against him. Vinny was aware of three of these complaints, which had been determined to be unfounded, but was unaware of the others. The reference said nothing about his character nor his ability to do his job. Vinny had been offered the job in London subject to his reference, but the offer was withdrawn when the reference was received. Vinny has now resigned from his position with Fleurison.

- (a) Advise Fleurison Limited whether Chi-Sin has breached any express and/or implied terms of his contract.

**(16 marks)**

- (b) Advise Fleurison Limited whether Vinny can bring a successful claim in relation to the reference and his subsequent resignation.

**(9 marks)**

**(Total: 25 marks)**

**Turn over**

### **Question 3**

Charlie van der Hagin was registered at birth as male, but for 13 years has identified herself as a woman and has lived as a woman. Recently she successfully applied for a job at Muwins, a department store in Birmingham. On her first day at work, she presented her passport to evidence her right to work in the UK. This was in her birth name, rather than the one she used. When questioned, Charlie explained that she is transgender.

Muwins advised Charlie that the Payroll Department would have to use her official name. However, she could use whatever name she wanted on her name badge. Charlie specified 'Charlie' as her preferred name. The Human Resources Department, however, failed to put a system in place to ensure that Charlie's privacy was properly protected. As a result, her legal and preferred name was recorded by the Human Resources Department as her birth name: Mr Charles van der Hagin.

As a result, the daily work allocation rotas referred to Charlie as Charles. When some of her colleagues learned of her transgender status, she became subject to gossip and speculation. Some staff referred to her as Charles, made jokes at her expense and insulted her. One of her colleagues said that standing next to her was like 'being in a men's rugby changing room after the match'. Another colleague said that she would make a very good bass singer in the local men's choir. When Charlie complained to her manager about these comments, she was ignored. No formal investigation was undertaken. Charlie feels that her complaints have not been taken seriously.

Advise Charlie what discrimination claims she can bring and the available remedies.

**(25 marks)**

#### Question 4

Derek has been working as a surveyor at Peppin Insurance Limited (PIL) since August 2008. His engagement letter described him as a 'sub-contracted employee'. It also stated that the terms of the agreement were set out in the company manual. The manual provided that surveyors worked on a self-employed basis. It also stipulated that drivers had the use of a car provided by PIL (and marked with the PIL logo), for which a monthly hire charge was payable by the driver. Derek was also required to carry a PIL identity card and to wear uniform issued by PIL. PIL also provided him with a mobile phone.

The contract provided for normal working hours consisting of five days a week, in which Derek was required to complete a minimum of 40 hours. However, PIL had no obligation to provide Derek with work on any particular day, and if there was no work for him, he was not paid. While working for PIL, Derek could reject any particular job he was offered by PIL, provided he had adequate reasons. He has also been informed that he will have to work a 70-hour week for the next three months due to staff shortage. Derek has never worked more than 48 hours per week.

Henrietta is a sales assistant at PIL. Her role is to sell new home insurance warranties to clients. Her remuneration package includes a basic salary plus commission based on the number (and type) of warranties she persuades customers to sign up to. When she took annual leave last year, she only received her basic pay. This was significantly less than her normal pay and she feels that it is a disincentive to take annual leave.

(a) Advise PIL as to Derek's employment status.

**(12 marks)**

(b) If it is determined that Derek is a worker, advise PIL whether he can bring any **statutory** claims.

**(8 marks)**

(c) Advise PIL as to what claim Henrietta can bring.

**(5 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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