

21 January 2022
Level 6
EMPLOYMENT LAW
Subject Code L6-4

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 2021- 2022, 31st edition, Richard Kidner, Oxford University Press, 2021.**
- 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.

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

1. 'Although compulsory retirement ages have been outlawed, the potential for arbitrary removal of older employees still remains.'

Critically assess the above statement with regard to the enforceability of an Employer Justified Retirement Age.

(25 marks)

2. A claim for potentially unfair dismissal will be determined on the basis of achieving 'fairness in all the circumstances'.

Critically analyse the factors that a court or tribunal will consider in determining whether this standard has been met.

(25 marks)

3. 'The relationship between employer and employee can influence almost every aspect of an employee's professional and personal welfare. Therefore, legal recognition of the obligations of an employer should be both broad and continually evolving.'

Critically evaluate the statement above in relation to the development of the implied duties of an employer at common law.

(25 marks)

4. (a) Explain the nature and purpose of statutory paternity leave.

(8 marks)

- (b) Critically assess the protection given to 'mothers' under shared parental leave legislation.

(17 marks)

(Total: 25 marks)

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

Question 1

Betty is the owner of a company called Aesthetic Ltd. The company specialises in interior decoration and has a total of ten employees. Over the last year, Aesthetic Ltd has experienced a steady decline in profits due to a decrease in customer orders.

Betty recently decided that she would need to make redundant three of the six employees in the administrative team, as there was insufficient work to allow all employees to remain with the company.

Betty drew up a list of employees who she might wish to make redundant and considered her overall opinion of each of them, based upon several variables. These variables were their attendance records, seniority in terms of age and experience, as well as the overall extent to which she felt they benefited the company.

Betty decided that the first employee to be made redundant would be Edward. This decision was based upon Edward having taken more sick leave than any other employee in the preceding six months. His absences were due to a serious and chronic asthma condition that flared up, resulting in Edward struggling to breathe and needing to take time off work to recover. Furthermore, despite him working at Aesthetic Ltd for over four years, Betty felt that Edward had never got along with the other employees, due to him being in a different age group.

Betty then decided that the next employee to be made redundant would be Latisha. This decision was based upon Latisha being the only part-time worker in the company and Betty considering full-time employees more economical to retain. Furthermore, Latisha had most recently joined Aesthetic Ltd, having been employed for just over two years, and Betty felt it was fairer to select her for redundancy than longer-term employees.

Betty informed Edward and Latisha that they had been made redundant.

(a) Advise Betty whether she has followed a proper procedure when **selecting** Edward and Latisha for redundancy.

(17 marks)

(b) Explain the remedies available against Aesthetic Ltd, if Betty has failed to follow a proper redundancy procedure.

(8 marks)

(Total: 25 marks)

Turn over

Question 2

Heather is a transgender female. She is employed by Vases Ltd, a vase restoration company. Heather has a history of alcoholism and recently suffered a relapse in her addiction. This resulted in Heather experiencing headaches that affected her ability to undertake the intricate work involved in mending vases. Heather asked her manager, Melinda, if she would allow her to pack the vases, rather than mend them, as this was an easier role for her to undertake during her relapse. Melinda refused the request.

Karthik is also an employee of Vases Ltd and has been working at the company for nine months. Karthik has suffered with depression for several years; a condition for which he regularly attends counselling and also takes prescription medication. Karthik recently suffered a flare-up of this depressive illness, which has affected his ability to concentrate on his work. Furthermore, Karthik finds that the noise in the shared workspace worsens his depression.

Karthik explained his condition to Melinda and asked if he could be moved to work in a quieter part of the building. Melinda refused this request on the basis of the cost involved in setting up a new workstation. Melinda also felt that it was an unfair request, considering that Karthik had only recently joined the company, and the fact that he was unwilling to contribute to the costs involved in moving his workstation.

When Heather found out that Melinda had refused Karthik's request, she told Melinda that she should be more compassionate towards Karthik and support him through his illness. Two days later, Melinda removed Heather from the early morning shift she had worked during the previous four years. When Heather complained about this change, Melinda told her that she was not interested in the complaints of a 'sexually confused man'; this comment shocked Heather, as Melinda had not expressed such views previously. Heather has avoided the staffroom since this exchange, as she feels very humiliated and embarrassed, especially as several colleagues overheard Melinda's comments to her.

Advise Melinda whether she has breached Heather's and Karthik's rights under the Equality Act 2010.

(25 marks)

Question 3

Orbit Ltd is a company specialising in the creation of handmade toys. Orbit Ltd recently became the sole repairer of toys for a local store, 'Kids Play', having taken over this service from its only competitor, TedBears Ltd. This also involved the transfer of two employees from TedBears Ltd to Orbit Ltd, Jatifah and Xavier, both of whom were machinists who had worked with TedBears Ltd for over four years.

Orbit Ltd had anticipated that being the only repairer of toys for 'Kids Play' would result in an increase in profits. However, two months after the takeover, the company profits had remained the same. Orbit Ltd felt that it could no longer economically justify having two newly transferred employees, particularly as they were paid a higher wage than other employees due to the pre-existing terms of their transferred contracts.

Orbit Ltd therefore decided to reduce the working hours of both Jatifah and Xavier, with a proportionate reduction in their wages. This change also ensured that both existing and newly transferred employees were paid the same wages.

Upon hearing of this change in their working hours and wages, both Jatifah and Xavier resigned from Orbit Ltd.

- (a) Explain whether there has been a transfer under TUPE 2006 in relation to the takeover of the repair service from TedBears Ltd.

(5 marks)

- (b) Advise Orbit Ltd whether it has breached TUPE 2006 and, if so, on the claims available to Jatifah and Xavier.

(20 marks)

(Total: 25 marks)

Turn over

Question 4

Never Late Ltd is a business specialising in the collection and delivery of aircraft machinery. Callum is 28 years old and has been employed by Never Late Ltd since he was 17 years of age.

Callum's job title is 'manual assistant'. His duties include maintaining the delivery vehicles, as well as assisting in loading and unloading very heavy goods from the delivery vans as they arrive and depart. Callum's regular working shift is 12am to 9am four days a week and he is paid £7.80 per hour; this payment amount and shift pattern have remained the same throughout the duration of Callum's employment with Never Late Ltd.

Callum is required to undertake five days of unpaid training every six months to ensure that he remains up to date with how to maintain the delivery vehicles. During one of these training sessions, Callum accidentally damaged a piece of equipment that belonged to Never Late Ltd. The company said it would deduct the cost of the item from Callum's next wages. Callum requested that Never Late Ltd provide him with a statement detailing how his wages are broken down. He had never received such a statement and wanted to see exactly how much the company had charged him for the damaged equipment. This request was ignored.

Pedro also works for Never Late Ltd as a manual assistant. He joined the company on a 12-month contract, six months of which have elapsed. Pedro was told that he is not required to undertake the five days of training every six months that is expected of all permanent employees. When Pedro requested to undertake this training to maintain his skills, his request was denied, due to costs involved in the training. Pedro is paid the same wage as permanent employees of Never Late Ltd who perform the same role; however, he is not entitled to a 5% discount on staff canteen food that is given to all permanent employees.

Advise Callum and Pedro whether their rights have been breached by Never Late Ltd and explain the potential remedies available to Pedro.

[NOTE TO CANDIDATES: Do NOT consider Callum's potential remedies.]

(25 marks)

End of Examination Paper