

**LEVEL 3 - UNIT 6 – EMPLOYMENT LAW
SUGGESTED ANSWERS – JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

SECTION A

1. Three rights that employees have under statute could include protection against unfair dismissal (providing they meet the eligibility criteria), an entitlement to the minimum wage under the National Minimum Wage Act 1998 or a right to redundancy pay.
2. The minimum wage for an adult aged 18 to 20 is £5.55 per hour and £7.20 for an adult aged 25 or older (October 2016).
3. A wrongful dismissal can occur where an employee has been dismissed without any notice or without the correct notice. Where there is no payment in lieu of notice or the employee has not given grounds for a repudiation of the contract by the employer, s.86 Employment Rights Act 1996.
4. Victimisation is where the employee has been subjected to a detriment because they have tried to enforce their or someone else's right not to be discriminated against.
5. Two implied common law duties are the duty of obedience, such as where an employee must obey all reasonable orders, or a duty of good faith, for example where an employee is not permitted to work for a rival.
6. Under s.86 Employment Rights Act 1996, after 1 month employees are owed 1 week's notice for up to 2 years employment then, after 2 years, 2 weeks' notice are owed. For every additional year, 1 more week's notice is owed up to a maximum of 12 weeks' notice.
7. Under s.19 Equality Act 2010, indirect discrimination is where an Employer has applied a provision, criteria or practice which discriminates against a protected characteristic and also applies to a person who does not share the same characteristic, and therefore puts a particular group at a

disadvantage. The provision, criteria or practice cannot be shown to be a proportionate means of achieving a legitimate aim.

8. Excluded categories of employees include, Crown employees, military personnel or the clergy.
9. Three ways in which a contract may be terminated are by agreement, the resignation of the employee or by dismissal.
10. Terms that are required to be given to an employee under s.1 Employment Rights Act 1996 include the name of employer and employee, the date on which employment began, details of pay and holiday entitlement.

SECTION B

Scenario 1 Questions

1.
 - (a) To claim unfair dismissal the claimant must establish that they are eligible to claim. They must show that they were an employee and that they have two years' continuous employment. They must also have been dismissed. The claim must be brought within three months of the effective date of termination. Also, the claimant must not be employed in one of the excluded categories, such as a share fisherman.
 - (b) In order to establish if Matt would be successful in his claim for unfair dismissal he would firstly need to establish that he is eligible by satisfying the following tests: that he is an employee, that he has two years' continuous employment, that the claim is brought within three months and that he is not a member of an excluded category. Once it is established that Matt is eligible to claim, in order for him to be successful, he must still show that the dismissal was unfair. Misconduct is a potentially fair reason to dismiss, however in these circumstances the employer did not comply with the ACAS code of conduct, as there was no investigation of the allegations. Therefore, in these circumstances, Matt's dismissal could be considered procedurally and substantively unfair and he could be successful with his claim.
2. As this is a misconduct case the guidelines within the Acas code of conduct and the case of British Home Store v Burchell (1978) should be explained. The employer should have reasonable grounds to believe that the employee is guilty after conducting a reasonable investigation to establish all the facts. Once they have done this, the employer is then required to confirm the problem in writing and ask the employee to attend a disciplinary hearing. The employer must also inform the employee of their right to be accompanied, the outcome of the hearing and the right to appeal the decision. All of this must be done promptly and consistently.
3. If an employee is successful in their claim for unfair dismissal the remedies available to them would be compensation, reinstatement or re-engagement.
4.
 - (a) Under s.6 of the Equality Act 2010 a disability is defined as a physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities.
 - (b) Pierre can establish that he has a physical impairment, as he has a skin condition which has a substantial and long term adverse effect, as it is permanent. The condition affects his ability to carry out normal day-to-day activities; he cannot do the washing up, as he is allergic to the washing up liquid. It is likely, therefore, that this condition constitutes a disability and he would be likely to succeed with his claim.
 - (c) Under s.20 Equality Act 2010 an employer is required to make reasonable adjustments. Here, the washing up liquid Pierre uses worsens his skin condition. It would not be unreasonable for the employer to either change the liquid or provide Pierre with gloves. This would be a practical and effective change to make, taking into consideration the employer's resources. Pierre would not be required to pay for the gloves or to supply a different product. E.g. Archibald v Fife Council (2004)

Scenario 2 Questions

1. (a) Constructive dismissal is 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.

(b) A summary dismissal occurs where the employer 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.
2. (a) Conroy may bring a claim for constructive dismissal if he can show that it is virtually impossible for him to continue in his role. Western Excavating Ltd v Sharp (1987). He would do this by showing that Nahid has breached the implied term of duty of trust and confidence. At the time of the reprimand the door was open so that everyone could hear and Conroy's resignation was a direct response to this. Ogilvie v Nyrfor-Weir Ltd (2003)

(b) Conroy could have a claim based on direct discrimination due to the comments made regarding his age. Age is a protected characteristic under s.4 Equality Act 2010 and a one-off comment is sufficient to bring an action. E.g. Insitu Cleaning Co Ltd v Heads (1995)

(c) If Conroy is successful in his claim, the remedies available to him could be reinstatement, re-engagement or compensation, a declaration or a recommendation
3. Nahid is not allowed to deduct pay from Conroy's wages unless Conroy authorises him to do so. The deduction of tax and National Insurance is an exception to this. Ss13-27 Employment Rights Act 1996
4. 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.

Scenario 3 Questions

1. (a) Evie could be an employee of the academy because when applying the control test she:
 - is told what to wear by Adam.

The application of the multiple test also indicates that Evie is an employee as she:

- must provide a personal service;
- has worked there for three years;
- works full time;
- is subject to the company's disciplinary procedures.

Ready Mix Concrete (1968)

- (b) Applying the multiple test Evie could be self-employed as she:
 - started work on a casual basis;
 - never signed a contract;
 - submits invoices;

- pays her own tax and national insurance;
 - pays for her own uniform;
 - thought she could send her brother in to cover her shift.
2. (a) Two potential reasons for dismissal are capability and redundancy.
- (b) Adam could potentially dismiss Harry as Harry has been disqualified from driving. The disqualification means that Harry no longer has the qualification to drive. Adam may also consider the potentially fair reason of illegality. In order to use illegality as a reason to dismiss, Adam would need to show that the illegality directly affected Harry's ability to do the work he was employed to do. In this case it did, as it is now illegal for Harry to drive a car. However, there must also be no alternative employment available, as Harry is a prop maker he could still be employed in this capacity. Appleyard v FM Smith (Hull) Ltd (1972), Taylor v Alidair Ltd (1978).
3. (a) Two of the potential claims Jason could bring against the academy include; direct discrimination under s.13 Equality Act 2010. This would be on the grounds of his sexual orientation, which is a protected characteristic under s.12 Equality Act 2010. Jason has been dismissed, which means he has suffered less favourable treatment. The academy is liable. The other claim Jason could bring would be for harassment under s.26 Equality Act 2010. Harassment is defined as unwanted conduct that violates a person's dignity by creating an intimidating and hostile working environment. The comments from the other staff members such as 'people like you' or 'not right to work with children' could be considered as harassment and therefore the academy would again be liable.
- (b) The burden of proof in a discrimination claim is on the claimant to prove a prima facie case. The burden then shifts to the employer who must then establish that discrimination did not take place. S.136 Equality Act 2010.