



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 2016-2017, 26th edition, Richard Kidner, Oxford University Press, 2016.**
- 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 evaluate the difficulty of establishing a claim of victimisation under the Equality Act 2010.

(25 marks)

2. Critically analyse how the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 protect employees in a relevant business transfer.

(25 marks)

3. 'The evaluation of the employer's pre-dismissal procedure is a central element of the tribunal's or court's overall assessment of the reasonableness of a dismissal under section 98(4) of the Employment Rights Act 1996.' (David Cabrelli, *Employment Law in Context*, 2014)

Critically analyse, in the light of the above, whether the law on procedural fairness in unfair dismissal claims favours the employer.

(25 marks)

4. (a) Critically analyse the scope of employment protection (during employment and upon dismissal) given to women in relation to pregnancy and birth.

(14 marks)

- (b) Critically analyse the scope of employment protection (during employment and upon dismissal) given to women in relation to maternity.

(11 marks)

(Total: 25 marks)

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

Question 1

East Anglia Sports Limited (EASL) is a national retailer of sportswear, shoes and sporting equipment. It deploys a range of part-time, fixed-term and agency workers in its stores.

Dominic is a part-time sales assistant at EASL and has worked at the Norwich store for seven years. Although he is content to remain as a part-time sales assistant at EASL, Dominic is keen to receive training in management leadership. He has aspirations to be a store manager and feels that it is time for him to make progress in his career. When Dominic asked his line manager, Ethan, whether he could attend a course on management leadership, Ethan said that only full-time sales assistants could attend such courses, as it would otherwise be too costly. Ethan added that when the full-time sales assistants return from a course, they will be instructed to circulate photocopies of the relevant notes to part-time sales assistants. Yesterday, Dominic returned to work after suffering from norovirus for eight days. He learnt from his full-time colleagues that they are entitled to enhanced sick pay in their contracts. When Dominic checked his contract, there was no such provision.

Florin is 27 years old and is a temporary agency worker at EASL. He arrived from Romania recently and is gaining experience by working as a cleaner at different retail stores in England. As he is keen to learn and to impress, he accepted an hourly wage of £5.30 and has, on average, worked 65 hours per week at EASL for the last 15 weeks. He has been told that he cannot take any holiday until he has worked at EASL for six months.

Gianna has been on several fixed-term contracts with EASL for the past two years as a junior buyer. She has worked as a junior buyer for a total of six years. She would like to be considered for a permanent position at EASL. Gianna found out from her full-time colleagues that two permanent positions for senior buyers were recently advertised internally in job vacancy email alerts. After some investigation, Gianna realised that the group email address used in the email alerts covered only full-time buyers, so only they received notification of these job vacancies. Gianna also wonders whether her fixed-term contract can be converted into a permanent contract.

Dominic, Florin and Gianna approached EASL independently last week about their employment concerns.

Advise EASL as to the employment law issues concerning these three individuals.

(25 marks)

Question 2

Hannah is a minicab driver with Go Faster Taxis Limited (GFTL). When Hannah started her job with GFTL in May 2012, she had a written agreement with them that included the following terms:

- she is self-employed;
- she can accept or deny work without consequence as long as she continues to pay the rent for the vehicle and provides suitable notifications of absences;
- she understood that there is an 'open shift' system, whereby she can work such hours as she wishes.

In May 2017, GFTL told Hannah that her services are no longer required due to a restructuring exercise.

Igor is one of two telephone operators at GFTL. He has worked there for six years. About a month ago, he realised that the other telephone operator, Jackie, has been earning £100 per month more than he has for the last year. Jackie has also worked at GFTL for six years and is on the same grade as Igor. When Igor spoke about this to his manager, Katrina, she told him that Jackie is paid more because she deals with corporate clients rather than individual clients. As far as Igor is concerned, the work that he does is similar to Jackie's. He feels that Katrina's explanation is most unsatisfactory.

(a) Advise Hannah of her employment status. **(10 marks)**

(b) Advise Igor whether he has any claim against GFTL. **(15 marks)**

(Total: 25 marks)

Turn over

Question 3

Picton Pet Centre (PPC) is a veterinary practice in Cardiff. It employs four veterinary surgeons, five veterinary nurses and two receptionists.

Four days ago, Marcus, one of the veterinary surgeons, discovered that Nia, a veterinary nurse, had made serious errors when administering medication to a customer's cat. Marcus was furious and berated her in front of everyone in the practice. He told Nia that: 'If you do not immediately sort this out within the next hour, don't even bother coming back. A trainee could have done better.' Nia was distraught afterwards and went home. She has now received an email from Marcus, telling her that she has been dismissed and that they would not provide her with a reference. During her four years at PPC, Nia has had excellent feedback and appraisals.

Llywellyn is another one of the veterinary surgeons and has become increasingly dissatisfied with how the practice is managed. Towards the end of March 2017, he started researching the possibility of starting his own veterinary practice. Two weeks ago, he resigned from PPC and set up his own practice. He approached one of the nurses to join him at his new practice. In Llywellyn's employment contract with PPC, there are the following clauses:

'12.1 You covenant and agree that, during the term of your employment with the Practice and for twelve (12) months after the termination thereof, regardless of the reason for the employment termination, you will not, directly or indirectly, on behalf of any Competitive Business perform the same or substantially the same Job Duties.

'12.2 You also covenant and agree that during the term of your employment with the Practice and for twelve (12) months after the termination thereof, regardless of the reason for the employment termination, you will not, directly or indirectly, on your own behalf or on behalf of or in conjunction with any person or legal entity, recruit, solicit any employee of the Practice with whom you had personal contact or supervised while performing your Job Duties, to terminate their employment relationship with the Practice.'

(a) Advise PPC whether Nia can bring any common law contractual claim.

(10 marks)

(b) Advise PPC whether it has breached any implied term by refusing to provide a reference for Nia.

(5 marks)

(c) Advise PPC whether Llywellyn has breached any express terms of his contract.

(10 marks)

(Total: 25 marks)

Question 4

Starlit Bank is an innovative retail bank. It makes extensive use of modern technology to improve efficiency. It has recently launched an online banking application, which uses voice recognition. It also has plans to roll out its 'Bonor' artificial intelligence-based virtual customer service assistants more widely following a successful trial earlier this year.

As a result of these innovative measures, five customer-facing roles will be eliminated. Nadeem, the managing director of Starlit Bank, has declared a redundancy situation affecting all staff. He has drawn up a redundancy selection matrix where experience, time-keeping, reliability and sickness record are taken into account.

Othello is a customer service adviser at Starlit Bank and was selected for redundancy. He has worked there for eight years. Othello scored well on the redundancy matrix, has not had any warnings and has had very positive feedback from customers and colleagues. Employees with the lowest scores are made redundant. He does not think that the selection was fair and is at a loss as to why he has been made redundant.

Advise Othello as to what statutory claims he may bring against Starlit Bank.

(25 marks)

End of Examination Paper

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