

Part VI – Employment Law

Chapter 49 Employees and independent Contractors

1. What is a contract of employment?
2. What legislation regulates statutory rights of employees?
3. What tests do the courts employ to distinguish between (1) a contract of employment (2) a contract for employment?
4. In which case did the House of Lords overrule the Court of Appeal decision in *O'Kelly v Trust House Forte* (1983)?
5. What did the House of Lords hold as their decision in *Montgomery v Johnson Underwood* (2001)?
6. State and know the facts in *Ferguson v Dawson* (1978)
7. Can a person working part-time be considered an employee?
8. Can a “home worker” be regarded as an employee?
9. What was the status of the plaintiff in *Willy Scheidegger Swiss Typewriting School (London) v Ministry of Social Security* (1968) deemed to be by the court?
10. What legislation protects part-time employees?
11. Which regulations protect employees on fixed term contracts?
12. What is the general rule regarding Agency Workers?
13. What guidance was given by the Court of Appeal to tribunals in the *Dacus v Brook Street Bureau* (2004)?
14. In which recent case did the Court find that both a contract for and a contract of services existed?
15. State at least four of the six differences between employees and independent contractors?
16. When is an employer responsible for the wrongful acts committed by an independent contractor?

Chapter 50 The Contract of Employment

17. Specify the contents of a contract of employment.
18. State a situation where a legal contract performed illegally will not be void on the grounds of illegality.
19. What is required of an employer by *S1* of the Employment Rights Act 1996?
20. What must be included in the written particulars of the statement?
21. What is required by *S.35 Employment Act 2002*?
22. Where are the disciplinary and dismissal procedures contained?
23. What does *Schedule 2* provide for?
24. What must be contained in the itemised pay statement?
25. What shall the written statement not apply to?
26. How can changes to conditions of employment be effected?
27. What remedies are available for failure to provide written particulars?
28. What does *S38* of the *Employment Act 2002* provide for?
29. Which legislation protects part-time and fixed-term employees?
30. Under *S1* of the *Employment Rights Act 1996* in what other ways must part-time and fixed-term employees not be treated less favourably?
31. What must full-time employees be informed of?
32. What is the effect of an unbroken 4 year period of work?
33. What does *S4* of the *Employment Rights Act 1996* permit an employer to do? In the absence of written terms which terms may be implied?

Chapter 51 The Common Law Duties of an Employee

34. In what circumstances may an employer dismiss an employee?
35. What was the decision in *Lister V Romford Ice & Cold Storage Ltd (1957)*?
36. What is meant by “misconduct”?
37. What circumstances will justify Disciplinary dismissal under “misconduct”?
38. Why was the gardener not dismissed in *Wilson v Racher (1974)*?

39. Explain the term “*personal service*” in relation to “*implied duties*”.
40. Which case best illustrates that an employee must not make a secret profit?
41. When may an employer be granted an injunction against their employee?
42. In the case of *Nottingham University v Fishell (2000)* an employee pursued outside activities. What was the decision of the court?
43. What is meant by careful service of an employee?
44. Where an employee is sued for negligence by his employer or 3rd party, where can they hope to find statutory relief?
45. What is the position at common law in relation to “*gain*” against the employer?
46. What is required of an employee in relation to trade secrets?
47. In what way may an employer protect his trade secrets from disclosure by an employee?
48. Under what circumstances may an employee disclose information re his employer?
49. Which legislation protects an employee who discloses information about an employer?
50. What must the employee “believe” is pertinent to disclosing information re their employer?
51. What are the relevant statutory provisions regarding employees’ inventions?
52. What is the current position re an invention resulting from *special duties* assigned to the employee?
53. What do understand by the term “*in the ordinary course of business*” in relation to obeying lawful orders?
54. Why was the duty of obedience mitigated in the case of *Ottoman Bank v Chakarian (1930)*?
55. State the law in relation to an employee’s notice to “quit” or resign his post.
56. What did Lord Denning conclude in the case of *Secretary of State for Employment v Aslef (1972)* with regard to an employer’s undertaking?

Chapter 52 Duties of an Employer

57. In what circumstances is an employer obliged to provide work for his employees?
58. To which other professions with his caveat extended?
59. Why was *Langston* able to successfully sue despite being suspended for 2 years?
60. In what other circumstances must an employer provide work or payment to employees?
61. When must an employer indemnify an employee?
62. Under what circumstances may an employer not indemnify an employee?
63. What is regarded as “unsafe premises”?
64. Which legislation is pertinent in guaranteeing employees’ safety at work?
65. When will an employer be deemed to have failed in his duty to an employee regarding plant, tools and equipment?
66. In *Latimer v AEC (1953)* what standard was required of the employer re the safety of the employee?
67. Under what conditions may an employee resign and claim constructive dismissal?
68. In which recent decision have the Courts held that the duty to provide all employees with some means of redressing grievances is a common law implied duty?
69. Which considerations would be taken into account by Judges under the test of “reasonableness” in relation to safety and production?
70. Under the requirement of “reasonably safe system of work” what is the position re bullies or practical jokers?
71. State the requirements regarded as a reasonably safe system of work for all employees.
72. What legislation sets out broad criteria for employers?

Limitations on the Employer’s Duties

73. Detail the extent of employer’s duties with regard to safety provisions.

- 74. Which legislation dictates statutory requirements re employers “tools”?
- 75. What remedy is available to an employer?
- 76. What is the extent of an employer’s liability re the employee’s property?

References and Testimonials

- 77. Is an employer obligated to provide a reference for an employee?
- 78. What dangers are inherent for an employer giving a reference?
- 79. What is qualified privilege?
- 80. What is the penalty for an employer who gives an untrue reference?
- 81. What is the penalty for negligent misrepresentation?
- 82. Name two cases which illustrate negligent misrepresentation?
- 83. Name five pieces of anti-discrimination legislation.
- 84. What protection is offered by the *Rehabilitation of Offenders Act 1974*?
- 85. What is the relevance of the *Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000*?
- 86. Where can an employer lawfully record employee communications?
- 87. Where does the Act permit monitoring?
- 88. What obligations are placed on an employer as occupier of premises under *HSAWA 1974*?
- 89. What type of liability does contravention of the *HSAWA 1974* have for employers in relation to “visitors”?
- 90. Under which legislation is the position of a person other than a ‘visitor’ to be found?
- 91. What is vicarious liability?
- 92. How does vicarious liability arise?
- 93. In which circumstances may vicarious liability arise?
- 94. When are employers deemed not be vicariously liable?

95. Which case decided that an employer was not variously liable as the driver's action was outside the scope of his employment and the injured person was deemed to be a trespasser?
96. In which case regarding vicarious liability did Lord Denning give a dissenting judgement?

Time Off Work

97. Under what conditions and circumstances must an employee be afforded reasonable time off work with pay during working hours?
98. Under what circumstances is an employee permitted to have time off but without pay during working hours?
99. What is the required time to present a complaint to an Industrial Tribunal?

Disclosure of Information

100. What is ACAS?
101. What is the purpose of the *Health and Safety at Work Act 1974*?
102. How must an employer provide Health and Safety information?
103. What is the obligation of an employer in relation to Safety Representatives?

Chapter 53 Wages

104. Where should an employee be able to ascertain their wages/salary?
105. What is the purpose of National Minimum Wage legislation?
106. What are the current rates of pay?

Unauthorised Deductions From Wages

107. Which legislation protects employees, manual and non-manual alike, from unauthorised deductions from their wages?
108. Deductions from an employee's pay is regarded as unlawful with which exceptions?
109. What recourse has an employee who feels that they have been subjected to unlawful deductions from their salary or wages?

Equal Pay Act 1970

- 110. What is the ethos of the *Equal Pay Act 1970* and the *Sex Discrimination Act 1975*?
- 111. Who is protected by the *Sex Discrimination Act 1975*?
- 112. There are five exceptions to the Sex Discrimination Act. Name these.
- 113. What is meant by “*equal treatment*”?
- 114. If a term in a contract of employment is inconsistent with the ‘equality clause’ what is it deemed as?
- 115. Under which Act in European Community Law is a woman afforded equality with men?
- 116. Which case regarding discrimination against part-time female workers was challenged in the European Court?

Guarantee Payments (ERA S.28-34)

- 117. What is the entitlement to employees laid off for 1 day in any 3 month period?
- 118. What recourse is open to an employee who fails to secure a guaranteed payment?

Medical Suspension (ERA S.64-65)

- 119. When may an employer suspend an employee on medical grounds?
- 120. What is the statutory entitlement of an employee during this time?
- 121. What is the qualifying period for an employee dismissed on medical grounds as opposed to suspension?

Insolvency (ERA S.182-188)

- 122. Where can an employee find protection re amounts owing in respect of an employers bankruptcy?
- 123. What is the maximum recoverable from the liquidator?

Pay Statements (ERA S.8)

- 124. According to the legislation what must be included in an itemised pay statement?

125. What award may an Industrial Tribunal make to an employee for this omission?

Dismissal

126. Which type of dismissal is automatically unfair?

Chapter 54 Maternity Rights

Maternity Leave

127. Which regulations are pertinent re maternity leave?
128. Name the three types of maternity leave?
129. (a) What are the two levels of Statutory Maternity Pay and (b) who pays it?
130. What is the entitlement of an employee if redundancy occurs during maternity leave?

Right to Return to Work

131. Is an employee required to inform her employer of her return to work after Ordinary Maternity Leave?
132. What position is a woman entitled to return to in her employment?

Flexible Working

133. Which legislation provides for flexible working arrangements?
134. State the conditions pertaining to an application for flexible working?
135. What are the grounds for refusing an application for flexible working?
136. State the appeal procedure?

Suspension from Work on Maternity Grounds

137. What are the rights of an employee suspended on maternity grounds?
138. What are the entitlements of one so suspended?
139. In the case of *British Airways (European Operations at Gatwick) Ltd v Moore and Botterill (2000)* what did they achieve?

Ante-Natal Care

140. What is parental leave?

- 141. When is an employee entitled to dependant's leave?
- 142. Define dependant?
- 143. To whom does adoption leave apply?

Chapter 55 Discrimination

- 144. What is the current legislation in relation to discrimination against sex, race and disability?

Sex Discrimination Act 1975

- 145. What are the different forms of discrimination covered by the Sex Discrimination Act 1975?
- 146. Define discrimination.
- 147. Define “*positive*” discrimination.
- 148. What was the effect of the amendment to the Treaty of Rome May 1999?
- 149. Define “*direct*” discrimination.
- 150. Define “*indirect*” discrimination.
- 151. Define “*victimisation*”.
- 152. When will a claim of victimisation not lie?
- 153. How far does the scope of the Sex Discrimination Act extend?
- 154. Define Sex Discrimination in relation to (a) recruitment; (b) treatment of present employees; and (c) pregnancy, childbirth, death and retirement.
- 155. What is the effect of S.63A of the Sex Discrimination Act?
- 156. What guidelines, on the operation of S.63A do the Employment Appeal Tribunal lay down in *Barton v Investec Henderson Crosswaite Securities (2003)*?
- 157. Who prepared the questionnaire to assist with the determination of facts?
- 158. What is regarded as a genuine occupational qualification?
- 159. Which Code of Practice was issued by the European Commission in 1991?
- 160. Where is sexual harassment now defined?

161. What did the Employment Appeal Tribunal rule in the *Driskel v Peninsular Business Services Ltd (2000)* case?
162. What legislation may an employee avail of in relation to harassment in the work place?
163. What is the penalty on conviction under criminal justice?
164. When did the Employment Equality (Age) Regulations come into force?
165. What is the employer defence under the Regulations?
166. What is the effect of the *Employment Equality (Sexual Orientation) Regulations 2003*?
167. Define sexual orientation.
168. Which group is not protected under the Regulations?
169. What does a claimant have to show for an action to lie in unlawful sexual orientation?
170. What do the *Employment Equality (Religion or Belief) Regulations 2003* apply to?
171. Define gender reassignment as per *Section 82* of the *Sex Discrimination Act 1975*.
172. With regard to discrimination against contract workers state the liability of (a) the contractor of (b) principal.
173. What is the effect of breach of Sexual Discrimination Act or Equal Pay Act in relation to collective agreements or employer's rules?
174. When must a complaint be brought to an Industrial Tribunal in relation to discrimination?
175. What is the function of the Equal Opportunities Commission?
176. What is the race discrimination under the Race Relations Act 1976?
177. State the scope of the Race Relations Act 1976.
178. What are the exceptions to the Race Relations Act 1976?
179. What was the effect of the Race Relations (Amendment) Act 2000?
180. When does racial harassment occur?

181. Can an employer be held vicariously liable for racial discrimination by an employee done in the course of his employment?
182. Where does the burden of proof rest?

Disability Discrimination Act 1995

183. What is the purpose of the *Disability Discrimination Act 1995*?
184. What was the effect of the amended regulations and the 2005 Act?
185. What is provided for in *Section 53A*?
186. Define disability.
187. What is entailed in the four stage test for the determination of disability?
188. What addictions are not treated as impairment for purposes of the Act?
189. Which forms of discrimination are deemed unlawful under the Act?
190. What is the extent of the *EC Directive 2003/43*?

Chapter 56 Termination of Contracts of Employment

191. In what ways can a contract of employment be terminated?

Termination with Notice

192. What is the usual method of terminating a contract?

Notice – *S.86 Employment Rights Act 1996*

193. Under *S.86 ERA 96* what is the regulated statutory notice?

By Operation of the Law

194. In what other ways will the contract of employment be concluded?

Wrongful Dismissal

195. If an employee is unlawfully dismissed what avenues of claim are open to them?
196. When will a contract not be regarded as fixed term?
197. What is held as repudiation of a contract of employment?

Constructive Dismissal

198. What is regarded as a repudiatory conduct by an employer?

Remedies for Wrongful Dismissal

199. What are the remedies for wrongful dismissal?

200. Are damages recoverable for hurt feelings?

Unfair Dismissal

201. Where is the law for unfair dismissal contained?

202. Which categories of employee are excluded from unfair dismissal provisions?

203. On whom is the burden of proof in a claim of unfair dismissal?

204. What valid reasons may an employer advance to an Industrial Tribunal in relation to a complaint of unfair dismissal?

205. What conduct is required of a Tribunal when dismissing an employee?

206. Where is the guidance as to fairness of procedures contained?

207. What is provided by *S.98A ERA 1996*?

208. What is the three step process for dismissal and disciplinary procedures?

209. Under what circumstances is dismissal presumed to be unfair?

210. What are the service entitlements for a Written Statement of Reasons for Dismissal?

Remedies for Unfair Dismissal

211. What are the remedies available for unfair dismissal?

212. State the legal recourse available to an employee who considers they have been unfairly dismissed.

Chapter 57 Redundancy

213. What is the purpose of the redundancy payment?

214. What is the amount of compensation related to?

215. Where are redundancy disputes heard?

Conditions for Payment

- 216. Define an employee?
- 217. On whom does the burden of proof rest in proving employment?
- 218. What is the requisite length of continuous employment?
- 219. Which factors do not break continuity of employment for the purposes of redundancy?
- 220. Define dismissal.
- 221. In which section is redundancy defined in the Act.
- 222. Which categories of employees are not entitled to redundancy?
- 223. How is a redundancy payment calculated?
- 224. What is excluded for the purposes of continuous employment?

Notification of Redundancies Under *TULR(C)A 1992*

- 225. Who must the employer notify in relation to forthcoming redundancies?
- 226. Who must the employer consult with?
- 227. What are the respective timings for consultation purposes?
- 228. What must the employer disclose in writing for consultation purposes?
- 229. What is The Protective Award?
- 230. What are the maximum awards permitted?
- 231. Who must the employer notify when redundancies are proposed?
- 232. What is the penalty for failure to notify?

Chapter 58 Social Security

- 233. Where is social security law contained?
- 234. What is an industrial injury?
- 235. Define ‘in the course of employment’.
- 236. What does ‘arising out of employment’ mean?

- 237. When are accidents to which the claimant has not contributed to deemed to have arisen out of employment?
- 238. When are accidents to which the claimant has not contributed to not deemed to have arisen out of employment?
- 239. Apart from accidents what may also be included?
- 240. State the rules for Industrial Disablement Benefit.
- 241. What is Industrial Death Benefit?
- 242. How may an employee be disqualified?

Unemployment Benefit

- 243. Which legislation defines unemployment benefit?
- 244. When is a claimant disqualified from claiming benefit?
- 245. What is not regarded as suitable employment?

Sickness Benefit

- 246. Define eligibility for sickness benefit.
- 247. When will the 6 week disqualification be imposed?
- 248. When is State Incapacity Benefit paid?
- 249. What exactly does the medical test measure?
- 250. Who has overall responsibility for the administration of Social Security benefits?
- 251. Who has day-to-day responsibility for the administration of benefits?

Statutory Sick Pay

- 252. Define statutory sick pay?
- 253. What are the three tests required for statutory sick pay entitlement?
- 254. Which benefit will a claimant who is still incapacitated after 28 weeks transfer to?

Chapter 59 Industrial Injuries: Employer's Liability

- 255. What must an employee prove to claim damages (intent) under industrial injuries?
- 256. Which defences may the employer raise?
- 257. Which case endorsed the principles of defences against stress-related illness at work?
- 258. What must an employee prove in order to claim a breach of statutory duty under *HSAW Regulations 1992*.
- 259. Which defences may an employer bring to counter allegations of breach of statutory duty?

Fatal Accidents

- 260. What is the purpose and value of the *Fatal Accidents Act 1976*?
- 261. What is a 'dependant'?
- 262. Who is entitled to bring an action under the Act?
- 263. How are damages awarded under the Act?
- 264. Under which legislation would one claim for pain, suffering and loss of amenities?

The Limitation Act 1980

- 265. What is the purpose of the *Limitation Act 1980*?
- 266. When is the action statute barred?
- 267. When is a claim statute barred under *Fatal Accidents Act 1976*?
- 268. What will a court apply to override a claim out of time?

Assessment of Damages

- 269. Under what headings will damages be awarded?
- 270. Under what circumstances will an award of damages be reduced?

Chapter 60 Health and Safety at Work

- 271. Differentiate between the Health and Safety at Work Act and the Health and Safety at Work Regulations.
- 272. What is the purpose of the *HSAWA 1974*?
- 273. Which category of employee is excluded?
- 274. What is the duty of an employer as defined in *S.2* of the Act?
- 275. What is the standard of care required by the employer?
- 276. What information must an employer provide to every employee?
- 277. Which type of employer is exempt?

Duties of Persons in Control of Premises (*S.4.5*)

- 278. Which duty is required of an employer under *S.4.5*?

Duties of Employees

- 279. Which section of the Act details the employees duties?

General Duties

- 280. Which Sections of the Act provide for general duties?

Health and Safety Commissions (*S.10-14*)

- 281. Under which Sections of the Act were the two corporate bodies established?
- 282. What is the composition of the Commission?
- 283. What is the composition of the Executive?
- 284. State the functions of the Commission.
- 285. State the functions of the Executive.

Regulations and Codes of Practice (*S.16, 17*)

- 286. Who has power to make health and safety regulations?

Health and Safety Inspectors

- 287. State the powers of the Health and Safety Inspectors?

288. What enforcement powers are ascribed to Health and Safety Inspectors?
289. To whom does a Right of Appeal lie against an improvement or prohibition notice?

Offences

290. Which Section of the Act outlines offences?
291. What penalties can be imposed under the Act?

Safety Representatives

292. How is a Safety Representative appointed?
293. What are the functions of a Safety Representative?
294. What authority is conferred on safety representatives?
295. What occurs immediately there has been a notifiable accident?

Safety Committees

296. What is the function of a Safety Committee?

Health & Safety at Work Regulations 1992

297. What is the aim of the Health and Safety (General Provisions) Regulations?
298. What is the aim of the Provision and Use of Work Equipment Regulations?
299. What is the aim of Manual Handling Operations Regulations?
300. What three key steps must an employer take?
301. What did the Workplace (Health, Safety and Welfare) Regulations replace?
302. State the four areas the regulations cover.
303. State the objectives and exceptions of the *Personal Protective Equipment at Work (PPE) Regulations*.
304. What will the Health and Safety (Display Screen Equipment) Regulations cover?

Chapter 61 Institutions and Tribunals

305. State the aims of The Advisory, Conciliation and Arbitration Service (ACAS).
306. What are the five principal functions of ACAS?

The Central Arbitration Committee (CAC)

307. What are the main jurisdictions of the CAC?

The Certification Officer (CO)

308. What is a Certification Officer?

Commissioner for the Rights of Trade Union Members

309. What are the functions of the Commissioner for its Trade Union Members?

310. What is the function of the Commissioner for Protection Against Unfair Industrial Action?

311. When were Employment Tribunals established?

312. What are the advantages of taking a case to an Employment Tribunal?

313. What is the composition of an Employment Tribunal?

Employment Appeal Tribunal (EAT)

314. Under which legislation can an EAT hear an appeal from an Employment Tribunal?

315. What is the composition of an Employment Appeal Tribunal (EAT)?

316. Where does an appeal for an EAT lie?

317. What is the aim of the *Employment Rights (Dispute Resolution) Act 1998*?

Chapter 62 Trade Unions

318. What legislation governs the activities of Trade Unions?

319. Define a Trade Union.

Legal Capacity

320. What legal capacity is afforded to a Trade Union?

Trade Union Affairs

321. What are the requirements for a Trade Union to have its name to be entitled on a list of Trade Unions?

322. What is the purpose of the certificate of listing?

323. How can a Trade Union achieve recognition?

Trade Union Ballots

324. Which provisions are made for Trade Union ballots?

Collective Agreements

325. Define a collective agreement.

326. State the rights and remedies of an employer who has been the target of industrial action.