

Unit 19



<b>Title:</b>	<b>The Practice of Employment Law</b>
<b>Level:</b>	<b>6</b>
<b>Credit Value:</b>	<b>15</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the purpose of different types of employment contract clause</b>	<p><b>1.1</b> Identify the purpose of a variety of express and implied contractual terms</p> <p><b>1.2</b> Explain the main express and implied post-termination restraints</p> <p><b>1.3</b> Analyse the enforceability of these post-termination restraint clauses</p>	<p><b>1.1</b> An understanding of the contents of employment contracts with a focus on terms operating during the employment relationship; an outline of the contents of sections 1-7 Employment Rights Act (ERA)1996; consideration of additional terms such as gross misconduct clauses, payments in lieu of notice, protection of intellectual property including confidential information and trade secrets, garden leave, etc; contrasting these with the idea of post termination restraints</p> <p><b>1.2</b> The four types of restrictive covenants: definitions and purpose of non-competition, non-solicitation, non-poaching and non-dealing; the concept of implied terms with a particular focus on the implied term of confidentiality</p> <p><b>1.3</b> Enforceability of restrictive covenants); criteria which must be satisfied to achieve enforceability, including legitimate interests to protect and being no wider than necessary to</p>

	<p><b>1.4</b> Analyse the relationship between post-termination restraint clauses and any garden leave clause</p> <p><b>1.5</b> Analyse a given legal situation on contractual clauses in order to offer practical advice and assistance</p>	<p>protect the employer's business interest; reasonableness in terms of time, area and nature of information protected</p> <p><b>1.4</b> Definition of garden leave clauses; importance of an express clause, and their purpose and effect, if any, on restrictive covenants</p> <p><b>1.5</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting amendments to a basic restrictive covenant to rectify deficiencies in its enforceability ( in the case of non-solicitation clauses, limitation to specific customers within a specified period prior to the employee's departure; drafting must bear in mind the operation of the blue pencil test); briefly identifying a wrongful dismissal to the extent necessary to advise upon its effect on a restrictive covenant (ie, basic definition of a wrongful dismissal and concept of repudiatory breach and its effect on restrictive covenants; considering the possibility that confidentiality covenants may survive a repudiatory breach)</p>
<p><b>2 Understand the role of policy and procedure within effective employment dispute resolution</b></p>	<p><b>2.1</b> Describe core policies and procedures within the organisation</p> <p><b>2.2</b> Explain the reasons for core policies and procedures</p> <p><b>2.3</b> Explain the importance of detailed</p>	<p><b>2.1</b> Identifying core policies and describe their function: discipline, dismissal and grievance, internet and communications use, equal opportunities (including anti harassment and bullying), whistle blowing, sickness absence, health and safety, family friendly policies and flexible working</p> <p><b>2.2</b> The importance of preventing claims arising by the adoption, implementation and review of a comprehensive up to date company handbook; contrast between contractual and non- contractual provisions</p> <p><b>2.3</b> The difference between disciplinary and</p>

	<p>disciplinary and grievance policies and procedures</p> <p><b>2.4</b> Explain the effective use of detailed disciplinary and grievance policies and procedures</p> <p><b>2.5</b> Analyse a given legal situation on employment dispute resolution in order to offer practical advice and assistance</p>	<p>grievance cases: definitions under s.13 Employment Relations Act 1999; the importance of detailed disciplinary and grievance policies and procedures: eg, promoting orderly employment relations and fairness and consistency in the treatment of employees; communicating to employees what behaviour employers expect from them; dealing with situations where employees break disciplinary rules or don't meet their employer's expectations etc</p> <p><b>2.4</b> Reference to ACAS guidance on core provisions of policy, such as, eg, the disciplinary policy should be in writing; it must be non-discriminatory; deal with matters promptly and confidentially; tell employees what disciplinary action might be taken; the levels of management with the authority to take disciplinary action etc</p> <p><b>2.5</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>3 Understand the effective management of staff dismissal</b></p>	<p><b>3.1</b> Identify the qualifying requirements for an unfair dismissal claim and the six potentially fair reasons to dismiss</p> <p><b>3.2</b> Explain when a dismissal will be fair in all the circumstances taking into account the procedure followed</p>	<p><b>3.1</b> Application of the preliminary qualifying requirements and the six potentially fair reasons under s98 ERA 1996 (capability; conduct; redundancy; retirement; statutory illegality; some other substantial reason); recognition and application of automatically unfair reasons for dismissal</p> <p><b>3.2</b> Relationship between potentially fair reasons and fairness in all the circumstances, including the band of reasonable responses of the employer derived from <i>HSBC Bank v Madden (2001)</i>; to include the role of procedure in considering unfair dismissal claims</p>

	<p><b>3.3</b> Explain the provisions of the ACAS Code of Practice and statute on disciplinary and grievance matters</p> <p><b>3.4</b> Explain the consequences of failure to handle dispute resolution effectively, including the effects on an unfair dismissal claim</p>	<p><b>3.3</b> ACAS Code can be taken into account by employment tribunals in deciding whether employers have acted properly in connection with unfair dismissal claims; contents of the revised code; the Code is the key guidance governing management of disciplinary and grievance situations; it lays out what needs to be followed before contemplating a dismissal; for eg: use of informal procedures first, where some form of formal action is needed what action is reasonable will depend on all the circumstances, employers and employees should do all that they can to resolve disciplinary and grievance issues in the workplace, an employee should be informed of the basis of the problem and have an opportunity to put their case, an employee has the right to be accompanied at any disciplinary or grievance meeting including the statutory provisions governing the right to be accompanied (Employment Relations Act 1999 s10(1)(b)) etc; consequences of failure to allow accompaniment: an employee should be allowed to appeal against any formal decision made; good practice to keep written records during disciplinary and grievance cases</p> <p><b>3.4</b> Provisions of the Employment Act 2008 concerning dispute resolution; discretionary powers on tribunals to amend awards if parties have failed to comply with the ACAS Code including increase or reduction of compensation by 25%; conciliation by ACAS ; tribunals' powers by which they may reach a determination without a hearing; consequences on an unfair dismissal claim if no fair procedure followed, including acting</p>
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	<p><b>3.5</b> Identify the remedies available to an employee when the employer implements an unfair dismissal</p> <p><b>3.6</b> Analyse a given legal situation on the effective management of staff removal in order to offer practical advice and assistance</p>	<p>outside the band of reasonable responses and following poor procedure</p> <p><b>3.5</b> The function of the Employment Tribunal; compensation (consideration to include calculation of basic award and advice on compensatory elements including the potential 25% increase or decrease to the awards and the role of mitigation); awareness of further remedies of reinstatement and reengagement</p> <p><b>3.6</b> Analysis of a complex scenario to offer advice and assistance; eg, simple compensation calculations</p>
<p><b>4 Understand how to effectively manage a transfer of a business or part of a business from one organisation to another</b></p>	<p><b>4.1</b> Explain what a Transfer of an Undertaking is and why there is a need for employee protection when such a transfer takes place</p> <p><b>4.2</b> Explain when TUPE applies to a business situation</p>	<p><b>4.1</b> Definition of transfer of an undertaking; the overall nature of the protection afforded by the provisions of Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE 2006'); the common law position before statutory intervention</p> <p><b>4.2</b> The potential range of TUPE transfer situations including definition of a relevant transfer (TUPE 2006 regulation 3) and application to: business transfers (including whether there is an identifiable economic entity), changes of service provision including outsourcing, first generation contracting out, second generation contracting out, in-sourcing; the effect of the TUPE regulations, understanding that there can be a transfer of an undertaking for the purposes of TUPE 2006 even though: there is no contractual relationship between the alleged transferor and the alleged transferee, there is no transfer of physical assets, only part of an undertaking is transferred; guidance taken from case law: for example, principles from <i>Spijkers</i></p>

	<p><b>4.3</b> Explain the legal consequences following a relevant transfer</p> <p><b>4.4</b> Define an economic, technical or organisational reason and describe its effect in a transfer situation</p>	<p><i>Gebroeders v Benedik Abbatoir CV and Alfred Benedik en Zonen BV, ECJ (1986) ECR 1119 (Spijkers case), Cheesman v Brewer Contracts EAT [2001] IRLR 144, Fairhurst Ward Abbotts Ltd v Botes Building Ltd and others CA 2004 EWCA Civ 83, TGWU v Swissport (UK) Ltd (in administration) and Aer Lingus Ltd EAT 2007 ICR 1593</i></p> <p><b>4.3</b> Legal consequences including: dismissals: effect of relevant transfer on contracts of employment and preservation of continuity of employment (TUPE 2006 regulation 4); preservation of terms and conditions of those employees who are transferred (TUPE 2006 regulation 4); limited opportunity for the transferee or transferor to vary the terms and conditions of employment (TUPE 2006 regulation 4, including regulation 9 - insolvency); protection from dismissal before or after a relevant transfer (TUPE 2006 regulation 7); notification of employee liability information (TUPE 2006 regulation 11); remedy for failure to notify employee liability information (TUPE 2006 regulation 12); information and consultation requirements: duty to inform and consult representatives (TUPE 2006 regulation 13 and 15)</p> <p><b>4.4</b> Definition: economic, technical or organisational (ETO) reason and the importance of the fact the ETO reason must entail changes in the workforce; the ETO reason must relate to the transferor's future conduct of the business (eg, <i>Hynd v Armstrong and others (2007) and Whitehouse v Blatchford and Sons Ltd 2000 ICR 542, CA</i>); effect on protection from dismissal if an ETO</p>
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	<p><b>4.5</b> Analyse a given legal situation on the effective management of a transfer of business in order to offer practical advice and assistance</p>	<p>reason applies (regulation 7); effect of an ETO on attempts to vary terms, ie, the variation will be void if the sole or principal reason for the variation is the transfer itself; or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce (Regulation 4 (4))</p> <p><b>4.5</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>5 Understand the statutory minimum provisions relating to family friendly provisions</b></p>	<p><b>5.1</b> Describe the right to time off for ante natal care</p> <p><b>5.2</b> Explain the key features of maternity and paternity leave</p>	<p><b>5.1</b> Ante natal care: outline right to time off for ante natal care, when an employer can refuse and remedies for unreasonable refusal; s55 Employment Rights Act 1996</p> <p><b>5.2</b> Maternity Leave: outline compulsory maternity leave (ERA 1996 s72 and Maternity and Parental Leave Regulations 1999 regulation 8); the qualifying criteria for ordinary and additional maternity leave; notice to be given; the extent of ordinary leave, ie, 26 weeks (Maternity and Parental Leave Regulations 1999 regulation 7); when maternity leave commences; notifying an employer re the end date of maternity leave; the extent of additional maternity leave; contract of employment continues throughout ordinary and additional maternity leave - differences between rights during ordinary and additional leave; the right to the continuation of rights and benefits of the contract (remuneration excepted) and the right to return to work; Maternity and Paternity Leave (Amendment) Regs 2002; Employment Act 2002 and Part VIII ERA 1996; s.18 Equality Act 2010, pregnancy and maternity</p>

	<p><b>5.3</b> Explain when statutory maternity and paternity pay will be paid and the current rates</p> <p><b>5.4</b> Explain the remedies available to an employee when an employer fails to honour maternity or paternity rights</p>	<p>discrimination: work cases and the insertion of a maternity equality clause under s.73</p> <p>Paternity Leave: statutory paternity leave (Employment Act 2002 s1, ERA 1996 s80A Paternity and Adoption Leave Regulations 2002); amount; when taken; who can take paternity leave; entitlement (must be an employee but can be a part-time employee); notice to be given; qualification (the employee must have been in continuous employment with their employer for 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth); entitlement while absent on statutory paternity leave to all the benefits and obligations, other than entitlement to wages or salary, to which he would be entitled if at work; entitlement to return to job at end of paternity leave</p> <p><b>5.3</b> Maternity and Paternity Pay: qualifying criteria for Maternity and Paternity leave, the level of remuneration and both rates of Statutory Maternity and Paternity Pay; ss164-171 Social Security Contributions and Benefits Act 1992</p> <p><b>5.4</b> Remedies available to an employee when the employer fails to honour maternity or paternity rights: dismissal of a female employee will be automatically unfair dismissal under section 18 Equality Act 2010, parental leave, or time off for helping dependants under ERA 1996 s.57A, failure to return to work at the end of maternity leave if the employer had not given her the notice of the end date of her maternity leave, selection for redundancy on any of the grounds above is also automatically unfair dismissal; dismissal of a male employee will</p>
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	<p><b>5.5</b> Explain the current right to request flexible working and proposed extensions to that right</p> <p><b>5.6</b> Explain the right to parental leave and time off for dependants</p>	<p>be automatically unfair dismissal if he is dismissed because he took or sought to take paternity leave (or is selected for redundancy for that reason) (see Paternity and Adoption Leave Regulations 2002 regulation 29); other remedies include: the right not to be subjected to a detriment (ERA 1996 s47C and s57A); a female employee who has suffered a detriment in contravention of the rules noted above can make a complaint to an employment tribunal (ERA 1996 s48); compensation (ERA 1996 s.49); the right not to be subjected to a detriment for male employees: ERA 1996 s47C and Paternity and Adoption Leave Regulations 2002 SI regulation 28</p> <p><b>5.5</b> The right to request flexible working: awareness of rationale (that it is just a right to request and not a right) and qualifying criteria; qualifying requirements; nature of the flexibility (eg, hours, times, place of work); circumstances in which an employer can legitimately refuse; application procedure; consequences of an employers' refusal; remedies if unfairly refused; right to appeal; s80F ERA 1996</p> <p><b>5.6</b> Parental leave; qualifying criteria; right to up to 4 weeks unpaid parental leave per year while the child is under age 5; overall maximum of 13 weeks leave in respect of each child; parental leave taken in blocks of one week; employee notice to take leave; employers' right to require the employee to postpone leave; right to apply to an employment tribunal if the employer attempts to prevent him/her taking parental leave; both men and women</p>
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	<p><b>5.7</b> Analyse a given legal situation on family friendly rights in order to offer practical advice and assistance</p>	<p>are entitled to it in addition to paternity and maternity leave.  Time off for dependants: all employees are entitled to a reasonable amount of unpaid time off work to deal with emergencies involving a dependant (Employment Rights Act 1996 s57A); right not to be dismissed or victimised for doing so; if a person is dismissed, including being selected for redundancy, for exercising or seeking to exercise this right, the dismissal will be automatically unfair (ERA 1996 s.99); time off can be taken in order to take action to provide assistance when a dependant falls ill, gives birth, is injured or dies; definition of dependant; an employee who is unreasonably refused permission to take time off can take action in the employment tribunal for compensation; if the employee is dismissed because he or she took, or sought to take, time off under it will be automatically unfair dismissal</p> <p><b>5.7</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>6 Understand retirement procedures and the relationship with age discrimination</b></p>	<p><b>6.1</b> Explain the statutory provisions governing retirement</p>	<p><b>6.1</b> Retirement procedure: default retirement age of 65, or their normal retirement age if later; if the normal retirement age is below 65, it must be objectively justified; employers must give employees advance notice of retirement; and tell employees that they can request to work for longer; employers who want to terminate the employee's employment before the normal or the default retirement age must have another fair reason for dismissal and follow the normal dismissal procedures; retirement dismissal may be unfair if there was not at least six months' written (and no more than 12</p>

	<p><b>6.2</b> Explain when an employee may claim age discrimination</p> <p><b>6.3</b> Analyse a given legal situation on retirement procedures in order to offer practical advice and assistance</p>	<p>months notice) of the intended retirement date; must also have been notice of the right to request to continue working; procedure for meeting with the employee to discuss the request; right to appeal if request not to be retired is refused; sections 98ZA -98ZF of the ERA 1996; Equality Act 2010</p> <p><b>6.2</b> Direct and indirect discrimination; harassment and victimisation; Equality Act 2010 including defences, evidential issues, burden of proof remedies and time limits</p> <p><b>6.3</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>7 Understand the practical principles governing the negotiation of, preparation of and advice upon binding compromise agreements</b></p>	<p><b>7.1</b> Describe the purpose and effect of compromise agreements</p> <p><b>7.2</b> Analyse purported compromise agreements to assess full compliance with the statutory requirements</p>	<p><b>7.1</b> Understanding of the importance of compromise agreements and the ACAS form of settlement agreement: COT3 (s18 of the Employment Tribunals Act 1996) as a way of resolving employment disputes; an understanding of without prejudice negotiation and privilege</p> <p><b>7.2</b> Application of s203 of the ERA 1996 concerning the need for an independent legal adviser, the requisite insurance, and meeting all the requirements concerning compromise agreements: eg, the agreement must be in writing, the agreement must relate to the particular proceedings, the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an Employment Tribunal, the requirement that the adviser must be a qualified lawyer: Employment Rights (Dispute Resolution) Act</p>

	<p><b>7.3</b> Analyse a given legal situation on compromise agreements in order to offer practical advice and assistance</p>	<p>1998 s9; the adviser must be covered by a professional indemnity insurance in respect of the advice given; the adviser must be identified in the agreement; the agreement must state that the above conditions are satisfied; s.144 Equality Act 2010 retains the ability to contract out of terms under a qualifying compromise contract under s.147.</p> <p><b>7.3</b> Analysis of a complex scenario to offer advice and assistance; eg, drafting of sections of compromise agreements to ensure compliance with s203 of the ERA 1996</p>
<p><b>8 Understand the key stages of an employment claim in the tribunal or the civil courts</b></p>	<p><b>8.1</b> Explain the jurisdiction of employment tribunal and civil courts for a number of key claims</p> <p><b>8.2</b> Explain the main time limits for lodging claims in the tribunal and the civil courts and the rules governing extensions of those time limits in the tribunal</p>	<p><b>8.1</b> The main provisions of the Extension of Jurisdiction (England and Wales) Order 1994 and s.120 Equality Act 2010; most employment cases will take place within the tribunal system usually three month period under s.123, note that if it relates to a breach of an equality clause or rule the period is six months; ordinary civil courts have jurisdiction over a smaller number of employment matters including: breach of contract claims including wrongful dismissal, claims concerned with breaches of restrictive covenants, intellectual property claims, such as copyright or patent matters, personal injury claims for example based on breach of the implied contractual term that the employer must take care of the employee's health and safety; note: the employment tribunal also has jurisdiction to deal with contractual claims such as wrongful dismissal claims up to a £25,000 limit;</p> <p><b>8.2</b> The time limits for wrongful dismissal in different jurisdictions, unfair dismissal and a selection of other claims including claims for statutory redundancy payments; an</p>

	<p><b>8.3</b> Explain the purpose of the ET1 and ET3 forms</p> <p><b>8.4</b> Explain the processes and orders available in the tribunal and the appropriate use of interim procedures</p> <p><b>8.5</b> Identify jurisdiction and time limits for appeals and reviews of a tribunal decision</p> <p><b>8.6</b> Analyse a given legal situation with respect to an employment claim in order</p>	<p>understanding of the circumstances in which time may be extended (including the fixed three month extension until repealed) and the extensions available under the not reasonably practicable and just and equitable tests</p> <p><b>8.3</b> Understanding the purpose of the forms; the main elements of the forms</p> <p><b>8.4</b> Key stages of a tribunal claim including some core aspects of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 as amended; for example, pre-hearing reviews, default judgments, striking out, witness orders and requests for documents; preparation of witness statements, and actual processes in the tribunal; rights of audience: legal executives have rights of audience before an employment tribunal (Institute of Legal Executives Order 1998, SI 1998/1077); evidential issues: employment tribunals should not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts so hearsay evidence is admissible without specific notice requirements at the discretion of the tribunal: Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 Rule 14(2)</p> <p><b>8.5</b> Appeal lies with the Employment Appeal Tribunal (EAT) on any question of law; no right of appeal from an employment tribunal's decisions on facts; right to request review of an employment tribunal decision</p> <p><b>8.6</b> Analysis of a complex scenario to offer advice and assistance, eg, completing a simple claim</p>
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This specification is for 2012 examinations

	to offer practical advice and assistance	or response in the employment tribunal; completion of the form ET1 or ET3 based on an unfair dismissal scenario
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<b>Additional information about the unit</b>	
Unit aim(s)	To accredit a broad and detailed understanding of the Practice of Employment Law
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 45 First Line Employment Legal Advice and Unit 46 Employment Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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