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Employment law

Employment law is a big element in most, if not all, first-year business law courses. This area is best approached by viewing it as being split into two sections. The first section concerns the nature of the agreement between the employer and the employee. This forms a contract (the contract of employment), so your knowledge of general contract law is useful to you here – including express and implied terms in contracts, etc.

The second section concerns the very many rules surrounding such things as the difference between unfair and unlawful dismissal, what may happen if you're subject to redundancy, and so on. Most of this area is now governed by statutes, of which the most important is the Employment Act 1966. Disputes are generally heard by Employment Tribunals rather than a standard civil court. Disputes within the area of employment law may involve the use of case law in a civil court regarding such areas as breach of your contract of employment, or the application of statutory law by an employment tribunal.

The first section, concerning the type of contractual relationship you may have (or not have) with your employer, is the area where you're most likely to be asked to produce an essay or answer a longer written question in an exam. This is where you have to know some case law. As always, the more you know the better. The second section is, by the nature of the many different rules and regulations involved, the area which is most suited to multiple choice questions. Here unfortunately, you just have to keep reading and re-reading the information and hoping you've managed to remember enough facts which may come up in an MCQ exam for you to do well. I hate to have to say this but MCQs are really not much more than a memory test...

Most law lecturers, for reasons given in an earlier chapter, are likely to give you some hints about which areas to concentrate for the longer questions in the exam but it's difficult to give hints about MCQs. This is because it's so difficult to give any hints here without giving away specific questions.

Unless you're doing some specialist type of business law, which is unlikely in your first year, unfortunately you'll have to be pretty familiar with both of

these sections in the exam. Once again let me remind you to check your unit handbook which should give you the breakdown of how your exams are set out to see if you're likely to face MCQs which might include employment law.

Because of the nature of the second part of employment law, this is where you're likely to face the more intricate questions of the different types of dismissal and so on. These types of questions still exist, because it's so easy for your lecturers to set MCQs which can test very far reaching areas of knowledge. At least that's why I do it. Also, MCQs are so easy to mark. Particularly if marked electronically.

It's worth mentioning that a great deal of the modern law surrounding employment has come from our previous membership of the European Union. Pretty much all aspects of this law have been merged into English law, but questions have arisen as to what the effects might be on employment law once we fully leave the European Union. As virtually all aspects of European law have now been integrated within English law, most authorities suggest that for the greater part that's where it will stay. We won't be likely to see any more changes coming from Europe from now on. Changes in this area of law in the future will come from new acts of parliament or from changes made by English case law.

Section 1: Contracts of employment

It may seem strange, but you might be working in a full or part time job thinking that you are an employee, only to discover that if this is ever tested in court, in fact you are actually not an 'employee' at all. I'd better explain that one of the first difficulties is that, for a long time, the idea of whether you are an employee in the normally accepted understanding of this word or not, was rarely questioned. But, with the rise in more modern forms of employment such as job sharing, zero hours contracts, the whole issue of the gig economy and so on, the question of which type of worker you might be, has come more into question.

A current trend within employment is the so-called gig economy which has brought its own legal problems. If you haven't heard of the gig economy yet it's pretty certain you soon will. For example, a topical question is what employment status does an Uber driver have? Often individuals working in these newer forms of employment are referred to as 'atypical' workers. This term would also cover people who work from home and people who work for

various agencies. There has been a recent resolution, of sorts, of the situation regarding the worker status of Uber drivers – in 2021, the Supreme Court decided that they are ‘workers’ and entitled to statutory rights as employees. My guess is that this story is far from over. Keep your eye on the newspapers for further developments in this area.

Under the Tribunals, Courts and Enforcement Act 2007, employment disputes are now heard in a first-tier employment tribunal. As with most tribunals there is normally a right to appeal your case in an Upper Appeal Tribunal. An appeal is normally heard on a point of law, and legal aid for these appeals is normally available. A ‘point of law’ is a question to be decided as to what the law actually is on the particular issue at hand and how should this law be applied to the facts of a current case. Most of the case law which we’ll use in this chapter was decided well before the advent of employment law tribunals but the decisions of these earlier cases are still major precedents in this area of the law today. This is why we continue to use these cases, as they remain exceedingly relevant and are highly influential in employment law tribunals.

Why does it matter as to what type of employment relationship you have, you may well ask? Well it matters a great deal because, depending upon what type of employment you may be deemed to have, legal rights and protection afforded by the law could be quite different from that which you thought you might be entitled to. Traditionally your employer is responsible, amongst other things, for collecting your income tax through the Pay as You Earn (PAYE) scheme and collecting your National Insurance payments (NI).

Most of us have probably never had to be involved with any of this at all – probably never given it a thought apart from wondering why so much income tax is taken from our pay packets. Depending on the type of employment you have, your employer may (or may not) be responsible for your holiday pay, redundancy payments and any sickness pay which may be due to you and/or maternity and/or paternity leave.

This is why it’s so important to discover exactly what an ‘employee’ actually is – the answer may affect your legal position if you’re threatened with redundancy (with or without pay), the position if you become ill – will you be paid sickness pay or not, and should you receive holiday pay or not?

The main act covering employment law is Employment Rights Act 1996, the ERA. This act gives a definition of what an ‘employee’ is. The trouble is that this definition is quite wide ranging and therefore needs interpretation in many cases. This is where the older common (case law) comes in. The courts