

CHAPTER 13 THE CONTRACT OF EMPLOYMENT AND ITS TERMINATION

After studying this chapter students should be able to:

EXPLAIN THE DIFFERENCE BETWEEN AN EMPLOYEE, A CONTRACTOR, AND A SELF-EMPLOYED PERSON

- An employee is employed under a contract of service.
- A worker or self-employed person works under a contract for services.
- There are a number of tests to determine the difference, the most recent being the multiple test, which looks at all the elements of control, integration, economic reality, and mutuality of obligation.

OUTLINE THE TYPES OF IMPLIED TERMS CONTAINED IN A CONTRACT

- All contracts contain express terms and implied terms.
- Employment contracts contain terms implied both by statute and common law.
- Terms implied by common law are those such as fidelity, and mutual trust and confidence.
- Terms implied by statute are those such as an entitlement to at least the minimum wage and rights under the Working Time Regulations.

UNDERSTAND THE DIFFERENCE BETWEEN UNFAIR, CONSTRUCTIVE, AND WRONGFUL DISMISSAL

- Unfair dismissal is the dismissal of an employee who has at least two years' service for an unfair reason and/or in an unfair manner or procedure.
- Constructive dismissal occurs where an employee feels he has no choice but to leave because his employer has fundamentally breached his contract of employment. The employee may be able to claim unfair dismissal.
- Wrongful dismissal can be brought by any employee even if he does not have two years' service. It is a complaint about a dismissal which is in breach of the contract of employment.

SET OUT THE POTENTIALLY FAIR AND AUTOMATICALLY UNFAIR REASONS FOR DISMISSAL

- The Employment Rights Act 1996 sets out a number of potentially fair reasons for dismissal.
- These are capability, conduct, redundancy, statutory bar, and some other substantial reason.
- There are a number of automatically unfair reasons which are also set out in the statute. Examples of these are any kind of dismissal for a reason related to pregnancy, or a health and safety issue.

DEMONSTRATE KNOWLEDGE OF A REDUNDANCY SITUATION

- A redundancy situation occurs when a business or workplace is closing, or there is a reduction in the need for employees to do particular kinds of work.
- A redundancy which is not carried out by means of a proper procedure can amount to an unfair dismissal.