

CONTRACT OF EMPLOYMENT

What Is It?

- ❖ The importance of the employment contract
- ❖ The distinction b/n an employee and an independent contractor;
- ❖ Tests used by the courts/tribunals to interpret this distinction;
- ❖ The status of special categories of worker
- ❖ Contents of the employment contract – express and implied terms, terms implied by statute;
- ❖ The right to a written statement –
- ❖ Restraint of trade clauses;
- ❖ Qualifying for employment rights – continuity;
- ❖ Changing terms of employment
- ❖ Flexible working arrangements;

Contract of Employment

- Contract of employment and contract of self-employment – fundamental importance
- Only employees qualify for employment rights – unfair dismissal, redundancy payments, minimum notice on termination etc.
- Employees – contract of employment or **contract of service**
- Self-employed persons (independent contractors) – **contract for services**

Who is an Employee? – Statutes

‘an individual who works or seeks to work ... under a contract of employment’ ... or under any other contract whereby he undertakes to do or perform personally any work or service for another party...’

– ‘an individual who has entered into or works under a contract of employment’

‘contract of employment’ means a contract of service apprenticeship, where express/implied & (if it is express) whether oral or in writing.

Types of Contract

- Full - time contract
- Part-time contract
- Fixed-term contracts
- Regulations (Prevention of Less Favourable Treatment) 2000 and 2002 under the ERA 2002 to prevent employees

Distinction b/n an Employee & an Independent Contractor

- Courts and tribunals may have to decide;
- Tests applied;
 - control test
 - integration/organization test
 - multiple test

Tests Developed Through Case Law for Determining Employee's Status

- Control test – does the person who is to be regarded as the employer **control** the employee or servant?
- Control extends to not just what the employee does, but **how it is done**
- If the answer is in the affirmative – there is employer/employee relationship
- Independent contractor – might be told what to do, but not how to do the work
- One problem – interpreted strictly it results in skilled and professional people

Walker v. Crystal Palace Football Club [1910],

Facts: Walker was employed as a professional footballer with the defendant club and it has become important to decide whether Walker would be categorized under contract of service or contract for service. The court *held* that he was employed under contract of employment because the club has a control in form of training, discipline and methods of play.

Mersey Docks v Coggins: Stevedores hired a crane with its driver from harbor board under a contract which provided that the driver should be the employee of stevedores. Owing to the driver's negligence a checker was injured. *Held:* issue must be settled on facts & not on terms of contract.

- If control test is interpreted in modern working practices, it is insufficient due to the existence of highly skilled by the professional workers and makes detailed control impossible.
- The professional may perform the job on their own judgments due to their extra knowledge which no other person has it.