

# **CORPORATE ADMINISTRATION**

**JUNE 2008**

## **FIRST MAILING: THE HUMAN RESOURCE**

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**Relating to ICSA study text, Part Three, chapters, 6, 7, 8, 9, and 10**

## INTRODUCTION

Welcome to the distance learning course for Corporate Administration.

You will have received from ICSA the Corporate Administration manual when you enrolled and I will include references to the text throughout our distance learning. Campbell's College also include a little book on employment law (Employment Law Made Easy) to supplement this study booklet.

I have chosen to begin our studies with the Human Resources Element in the syllabus. There are a number of reasons for this. Firstly it appears to be a major topic with frequent questions appearing in Section A and Section B of the examination papers. Secondly it is a topic with a body of accepted knowledge: i.e. the law on employment is an established subject and therefore what must be learnt is clear. Thirdly you are all familiar with the topic: you are or have been employees; you are or have been associated with job applications, interviews, redundancies and health and safety. Finally because the opening chapters of the ICSA text on the meaning of administration are unclear (the author tells us "there are (*at least*) three possible answers" to the question of "What is corporate administration?" (page 4), I will leave that to the end of the study programme.

Beginning with the Human Resource is not without its own problems however. The syllabus is printed on page xxiii. Part three of the textbook covers the Human Resource. It is written by David Martin. The ICSA manual does not cover all the topics in the syllabus and the syllabus overview appears to have been written after looking at what was in the manual. **This course will teach the syllabus and attempt to harmonise the differences so that when you enter the exam room you are in a position to write answers that will satisfy the examiner.**

**I also want you to enjoy reading the subject – this is your career and it is an intellectually demanding and rewarding one as well.**

Please read through this text quickly to get a feel for the subject and then go through in detail and try to answer the questions on the last page of each mailing at roughly weekly intervals. Fax, post or email to me for marking. Read Employment Law Made Easy when you want a different approach to reinforce this booklet and the ICSA text.

Good luck and I look forward to reading your scripts.

Vivien Peralta

## UNIT ONE: WHO IS AN EMPLOYEE? (UK rules)

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*"No one ever made any real money by being a salaried employee". (William Davis)*

Most people work for someone else, be it another individual, a company or the government. The relationship between the individual and the person paying for the work is one of two types:

### **A CONTRACT OF SERVICE or A CONTRACT FOR SERVICES**

A contract of service gives rise to certain obligations in contract, tort and under statute whilst a contract for services is governed solely by the terms agreed upon by the parties.

A CONTRACT OF EMPLOYMENT IS ONLY A CONTRACT OF SERVICE.

EXAMPLES OF A CONTRACT OF SERVICE:

- (a) Factory hand
- (b) Chauffeur
- (c) Teacher working for Ministry of Education
- (d) House-servant.

EXAMPLES OF CONTRACTS FOR SERVICES:

- (a) Management consultant advising on a factory production line
- (b) Taxi-driver
- (c) Lecturer at a private college
- (d) Home-help

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## **HOW TO DISTINGUISH A CONTRACT OF SERVICE FROM A CONTRACT FOR SERVICES**

A person under a contract of service is called an employee.

A person under a contract for services is called an independent contractor.

The courts apply a number of tests to distinguish between the two.

**The most important is the CONTROL TEST.**

This requires two questions to be asked:

Has the employer the right to control the hours of work?

Has the employer the right to state the method of work to be used?

### ***WHITTAKER v MINISTER OF PENSIONS [1966]***

*A trapeze artist who could refuse to take orders in respect of her act, helped in the seating of the audience and the moving of the circus. The latter element of control made her an employee of the circus.*

If the answer to both of these questions is "YES" then the employee is under a contract of service. If the answer is "NO", a second test must be applied called **THE INTEGRATION TEST.**

Again two questions must be asked:

(a) Is the employee "part and parcel of the organisation"?

(b) Is the employee's work an integral part of the business?

If the answer to these questions is "YES" the employee is under a contract of service.

### ***CASSIDY v MINISTRY OF HEALTH [1951]***

*A doctor negligently treated a patient. The hospital was held to be his employer even though it did not tell him how to do his work but because he was part and parcel of the organisation.*

If the answer to the integration test was "No" there is the third test: of the "**ECONOMIC REALITY TEST**".

This is a nebulous test with three requirements:

The employee provides a service using his own work and skill;

The employee consents to the employer's control over his work;

The conditions of the contract are consistent with a contract of service.

**READYMIXED CONCRETE v MINISTER OF PENSIONS [1968]** is the leading case.

*This concerned a driver who purchased a cement lorry from the company whose logo appeared on the side. His job was to deliver concrete and he was paid on the basis of mileage and quantity. He was paid as a*

*self-employed contractor which was disputed by the Ministry. There was one element in this contract requiring him to provide substitute drivers. This was sufficient to describe the driver as self-employed.*

**If, after applying all of the tests the answer is negative the person concerned is under a contract for services.**

Note this interesting development quoted from Tolley's Business Administration: "The growth in self-employment, has also led to a willingness on the part of the courts to construe it as having a quasi employee status, particularly in relation to health and safety. This means that even where the contract is clearly one of self-employment the employer may remain liable for an injury suffered by a self-employed contractor as if he had been their employee. *Lane v Shire Roofing [1995]*"

#### **Distinctions are under a strain**

The employment/self employment distinction is under strain. There are a number of reasons for this. The range and type of people providing personal services have changed as have the services themselves. Some individuals effectively "sell" services to the employer; others work at different times, may have more than one job as portfolio workers or come and go according to demand or taste. Secondly statute has begun to bring within its scope these new providers of services. As "workers" these individuals now have access to minimum wage, regulated working time, the right to be accompanied at disciplinary and grievance hearings, the right to whistle-blow and access to rights as part-timers among others.

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**READING: ICSA: Chapter 7**

## **UNIT TWO: THE CONTRACT OF EMPLOYMENT (UK rules)**

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The common law rules of contract apply to employment contracts as modified by Statute.

There is no requirement for the contract to be in writing BUT every employer MUST provide the employee with a written statement of the main terms of employment within TWO MONTHS of the start of work (any subsequent alterations must be notified within a month). This is called the "WRITTEN PARTICULARS".

### **S.1 (EMPLOYMENT PROTECTION (CONSOLIDATION) ACT 1978.**

Names of the parties  
Date of commencement  
Job title and description  
Salary and when paid  
Hours of work  
Place of work and other places expected to work at.  
Holiday entitlement  
Sick leave/pay  
Pension rights  
Notice provisions.

If the employer does not provide the written particulars the employee can complain to an industrial tribunal. "But beyond that, there is no real sanction on the employer ... certainly complaining to an industrial tribunal is hardly likely to increase promotion prospects within the firm". John Pritchard

This is the minimum requirement for the express terms on which employer and employee contract. If there is an agreement reference must be made to that specific document.

Once a written statement has been supplied a further written statement must notify any changes not more than one month after the change.

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## **TYPES OF CONTRACTS**

### **Full-time and open ended contract**

This is the most common type, lasting until either party gives notice or until retirement age is reached.

### **Part-time contracts**

The hours worked depends on the organisation and the employment relationship. Most commonly used by women who have a young family. This type of contract now has the same statutory protection as full-time contract workers. The **Part Time Workers Regulations 2000** ensure that these employees are not treated less favourably.

### **Job Share**

This is where two individuals share the same particular job, but work different hours. This is now becoming more common with working mothers. This arrangement provides flexibility.

### **Fixed Term Contracts**

A fixed term contract is a contract for a specified time with a defined beginning and end. As a general rule this contract cannot be terminated earlier than the expiry date except by mutual agreement. An example of this is the fixed term contract employee that works to cover the job of a woman on maternity leave.

The **Fixed Term Employees (Prevention of Less Favourable) Treatment Regulations 2002** now offers protection to these employees. They are to be treated no less favourably. It does not cover employees from an agency.

### **Homeworkers**

These are employees that work from home, but are employed under a contract of service. Legislation is pending to protect them.

With the development of technology this type of contract is now gaining in popularity. Employers are well advised to develop a policy to cover such arrangements.

### **Directors**

Increasingly full time directors are classified as employees with a service contract; these fall under the same legislation as other employees.

### **Agency workers**

These are the workers that have worked consistently and for long periods of employment with an agency and do not apply to the "odd weeks" of work. In the event of a dispute the Employment Tribunal will decide.

Everyone at work has the same basic rights. Unions have campaigned and have been successful in achieving the rights for the agency worker. These new rights started in April 2004, Conduct of Employment Agencies and Employment Business Regulations. There is still some way to go though.

The rights that qualify:

- Entitlement to a minimum wage
- Working time hours.
- Paid holiday
- Safety in the work place
- Protection from discrimination
- The right to join a trade union
- To know the full terms and conditions for the agency work (not a written statement)
- Maternity pay (SMP only)
- To be paid for the work done, even in the event that the agency has not been reimbursed.
- Entitlement to sick pay (SSP only)
- Others

The rights that **do not** qualify, unless the "employee" multiple test is satisfied.

- The right to claim unfair dismissal
- The right to redundancy pay
- The right to maternity, paternity and parental leave and the request for flexible working hours
- The right to be paid for time off for antenatal care
- Rights to a written statement of the main terms and conditions of employment

There are now discussions that these types of workers will be entitled to full employment rights after only a period of 6 weeks employment. Gordon Brown is opposing these changes.

## THE DUTIES OF AN EMPLOYEE

Under the common law the employee must:

**(a) Give faithful and honest service.**

*In Hivac v Park Royal Scientific [1946] a competitor obtained an injunction preventing his staff from working in their spare time for the competition.*

**(b) Obey his employer's lawful instructions.**

*In Pepper v Webb [1969] a gardener's refusal to obey instructions was held to be a breach of his implied duty and warranted his summary dismissal.*

**(c) Use their special skills.**

**(d) Not to betray their employer's trust, i.e. not to sell trade secrets.**

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**READING: ICSA: Chapter 7**

**June 2004 section a Q1(i)** asked for an outline of the statutory requirements of the written contract of employment.

**June 2006 Section B Q6** was based entirely on the contract of employment.

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