

UNIVERSITY OF THE WEST INDIES
College of the Bahamas
Faculty of Law
LA 30B - EMPLOYMENT LAW

Worksheet
No. 1

Who is an Employee? The Tests of Employment

THE CONTRACT OF SERVICE AND THE CONTRACT FOR SERVICES

The Control Test

Yewens v Noakes (1880) QBD 530
Gibb v. United Steel Co. [1957] 2 All E.R. 110

Inadequacy of the Control Test

Walter v Crystal Palace Football Club [1910] 1 KB 87
Short v Henderson [1946] 174 LT 417

Organisation Test

Stevenson...v MacDonald [1952] 1 LR 101
Smith v Griffith [1974] 22 WIR 5.

Multiple Test

Ready Mixed Concrete v Minister of Pensions (1968) 2 QB 497

Economic Reality Test

Market Investigations v Ministry of Social Security [1969] 2 QB 173
Wieting and Richter v Paul (unrep) Civ. App. No. 120 of 1968 (Guyana)
Rudder v Dallaway (1984) 38 WIR 56
Lee v Chung [1990] IRLR 236
Lane v Shire Roofing Co. [1995] IRLR 493
McMeechan v Secretary of State [1997] ICR 549

Elementary Law Approach

American Life v N.A. B. (Unrep.) Case No. 21 of 1983 (Bahamas)
Withers v Flackwell [1981] IRLR 307

Intention Approach

Ferguson v Dawson [1976] 1 WLR 1213
Massey v Crown Life Ins. [1978] ICR 590

Obligation Test

O'Kelly v Trusthouse Forte [1983] IRLR 369
Wickens v Champion [1984] ICR 365
Nethermere v Taverna [1984] ICR 612
Cheng v Royal Hong Kong Club [1998] ICR 131
Clarke v Oxfordshire Health Authority [1998] IRLR 125
Express v Tanton [1999] ICR 693
Carmichael v National Power [1999] ICR 1226
Costain Bldg. v. Smith [2000] 215

MONOGRAPH

R.L. Chaudhary Contract of Service and the Worker in a Caribbean
Jurisdiction Barbados, Coles 1980.

ARTICLES

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TOPIC FOR DISCUSSION

Given the nature of modern employment relationship, which of the tests, if any, is best suited in determining whether one is an employee or is self employed?

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Who is an Employee? - Special employment situations

APPRENTICES

Dunk v Waller (1970) 2 QB 163

North East Coast Ship Repairers v Sect. Of State [1978] IRLR 149

Wallace v C.A. Roofing (1996) IRLR 435

Edmunds v Lawson (2000) IRLR 391

OFFICE HOLDERS

Great Western Railway Co. v. Bater (1920) 3 KB 268

102 Social Club v. Bickerton (1977) ICR 911

Police

AG for New South Wales v Perpetual Trustee [1955] AC 457

Ridge v Baldwin (1964) AC 60 (HZ)

Teachers

University Council of the Vidyodaya University of Ceylon v Silva [1965] 1 WLR 77 CPC

Mallock v Aberdeen Corp. [1971] 1 WLR 1578

Judge

Rees v Crane (1994) 43 WIR 444

General Civil Servant

Kodeeswaran v AG of Ceylon (1970) 2 WLR 456 (PC)

Thomas v AG [182] Ac 113 (PC)

AG of T & T v Toby 27 WIR 266

Rent Officer

Johnson v Ryan [2000] ICR 236

CLERK

President of the Methodist Conference v Parfitt (1984) ICR 177 (CA)
Davies v Presbyterian Church (1986) ICR 280 (HL)
Samtokh Singh v Guru Namak Gurdware (1990) ICR 309 (CA)
Birmingham Mosque v Alvai (1992) ICR 435
Gatherer v Gomez (1992) 41 WIR 68 (PC)
Diocese of Southwark v. Coker [1998] ICR 142

COMPANY DIRECTORS

Lee v Lee's Air Farming (1961) AC 12 PC
Parsons v Albert Parsons [1979] ICR 271
Eaton v Robert Easton [1988] ICR 302

NIB v Walke (1992) 45 WIR 35
Sect. of State... Trade v. Bottrill [1999] ICR 593 (CA)
Smith v Sect. of State [2000] ICR 69

PARTNERS

Cowell v Goodison [1989] IRLR 392
Eastdown v Cobb [1940] 1 ALL ER 49 CHL

CO-OPERATIVES

Drym Fabricators Ltd. v. Johnson [1981] ICR 274

TOPICS FOR DISCUSSION

- (1) To what extent and under what circumstances may office holders be regarded as employees?
- (2) Should apprentices and priests be categorized as employees, given their current methods of "Employment"?

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Worksheet
No. 3

IMPLIED TERMS

METHODOLOGY OF IMPLYING TERMS

The Moorcock (1889) 14 PD 64
Shirlaw v Southern Foundaries Ltd. (1939) 2 KB 206
Luxor v Cooper [1941] AC 108
Mears v Safecar Security [1982] IRLR 183
Sagar v Ridehalgh [1931] 1 Ch. 310

EMPLOYER'S DUTIES

Duty to pay wages

Mears v Safecar [1982] IRLR 183
Haley v Pease & Partners Ltd. [1915] 1 KB 698
Devonald v Rosser [1906] 2 KB 728
Browning v Crumlin Valley Colliers [1926] 1 KB 522

Duty to provide work ?

Turner v Sawdon [1901] 2 KB 653
Collier v Sunday Referee Publishing Co. [1940] 2 KB 647
Breach v Epsilon Industries [1976] IRLR 180
Langston v AUEW [1974] IRLR 182

Duty of Care

Johnstone v Bloombury Health Authority [1991] IRLR 118
Spring v Guardian Assurance [1994] IRLR 460
Bartholomew v London Borough of Hackney (1999) IRLR 246
Walker v Northumberland CC [1995] ICR 702
Scally v Southern Health ... Board [1999] ICR 771
University of Nottingham v Eyett [1999] ICR 721
TSB Bank v Harris [2000] IRLR 157

Duty to Cooperate

Isle of Wight Tourist Board v. Coombes [1976] IRLR 413

EMPLOYEE'S DUTIES

Duty to Obey Reasonable Orders

Laws v. London Chronicle [1959] 1 WLR 698
O'Brian v Associated Fire Alarms [1968] 1 WLR 1916
Morrish v Henlys [1973] 2 All E.R. 137
Cresswell v Board of Inland Revenue [1989] ICR 508
Macari v Celtic Football [1999] IRLR 787

Duty of Fidelity

Boston Deep Sea Fishing v Ansel (1888) 39 Ch D 339
Reading v A.G. [1951] AC 507
Bell v Lever Brothers Ltd. [1932] AC 161
Sybron Corp. V. Rochem [1983] IRLR 253
Hivac Ltd. V Park Royal [1946] 1 Ch 169
Wessex Dairies v Smith [1935] 2 KB 80
Robb v Green [1895] 2 QB 315
Faccenda Chicken v Fowler [1986] IRLR 69
Littlewoods Organisation v Harris [1977] 1 WLR 1472
FSS Travel v Johnson (1998) IRLR 445
Sect. of State... V A.S.R. E. F. (No.2) [1972] 2 QB 455
British Telecommunication v Ticehurst [1992] ICR 383
Nottingham University. Fishel [2000] IRLR 472

Duty of Care

Lister v Romford Ice [1957] AC 555

Mutual Duty to Maintain Trust and Confidence

Robinson v Crompton Parkinson [1978] ICR 40
Post Office v Roberts [1980] ICR 347
Woods v W M Car Services [1981] ICR 666
Lewis v Motorworld Garages [1986] ICR 157
Malik v Bank of Credit... [1997] 3 WLR 95
Nottingham University v Eyett [1999] ICR 721
Neary & Neary v Westminster [1999] IRLR 288
Bank of Credit.. V Ali [1999] ICR 1068
TSB Bank v Haris [2000] IRLR 157
Macari v Celtic Football [1999] IRLR 787
Johnson v Unisys [1999] IRLR 90

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Worksheet
No. 4

COLLECTIVE AGREEMENT AS A TERM OF THE CONTRACT

Legal Effect of a Collective Agreement Generally

Loman & Henderson v Merseyside Transport Services Ltd. (1968) 3 ITR 108
Ford Motor Co. Ltd. V. AUEFW (1969) 1 WLR 339
Shipping Association v Hayden [1976] 22 WIR 135

Methods of Incorporating the Collective Agreement into the Contract of Employment

Expressed Incorporation

Robertson v British Gas [1983] ICR 315
Marley v Forward Trust [1986] ICR 891
Cadoux v Central Regional Council [1986] IRLR 131

Trade Union as Agent of the Employee

Burton Group v Smith [1977] ITR 351
Lee v GEC Plessey [1993] IRLR 383
Singh v British Steel [1974] IRLR 31
London Transport v Moserop [1942] AC 332
Land & Wilson v West Yorkshire [1979] IRLR 174

Implied Incorporation

Joel v Cammel Laird [1969] ITR 206
Hamilton v Fuura Floors [1990] IRLR 478
Mordear v Jacob Beatus [1975] IRLR 170
Nelson v Post Office [1978] IRLR 548

Challenges to Enforceability once Incorporated

Consideration

Lee v GEC Plessey [1993] IRLR 383

Intention

Young v Canadian Northern Railway (1931) AC 83 P.C.

Edwards v Skyways [1964] 1 WLR 349

Conflicting Agreements

Cift v West Ridging cc [1964] Times 10

Apal Gas Col. Conversion v Mercedes [1974] ICR 420

Date of Agreement

Leyland Vehicles v Peston [1981] IRLR 19

What Terms are Incorporated

Sewell v Neptune Concrete [1975] IRLR 245

Lack of Clarity of Terms

Camden v. Lynott [1965] 3 All ER CA

Inappropriateness of Terms

Associated Newspaper v Wade [1979] IRLR 664 CA

Gallagher v The Post Office [1970 3 All ER 712

British Leyland v McQuilken [1978] IRLR 245

Tadd v Eastwood [1983] IRLR 320

National Coal Board v NUM [1986] IRLR 439

Griffiths v Buckinghamshire cc [1994] ICR 265 cf

Grant v South-West Trains Ltd. [1998] 188

Wandsworth London Borough Council v D'Silva [1998] IRLR 193

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STATUTORY TERMS AND CONDITIONS

Barbados Employment (Miscellaneous Provisions) Act - Cap. 346

This Act repealed the *Employment of Women, Young Persons and Children Act* and provides for the conditions under which such person may be employed in an undertaking as defined by the Act.

Occupational Training Act - Cap 42

This Act established a body corporation, the National Training Board (now called the vocational Training Board) which in part regulates the terms of contracts of apprentices.

Recruiting of Workers Act - Cap 354

This Act provides for the licensing of person who recruits workers and states that certain obligations are binding on the person so recruiting.

Civil Establishment Act - Cap 21

This Act empowers the Minister to establish "offices" in the public service.

Casual Employees Pensions Ac - Cap 21

This act provides for the payment of pensions and gratuities to persons employed in the public service on a casual basis.

Employment of Women (Maternity Leave) Act Cap 345A

This Act states that women are entitled to maternity leave under certain conditions.

National Insurance and Social Security Act - Cap 47

This Act provides for compulsory contribution by employer and employee to a Insurance Scheme and provides certain benefits to employees such as sickness benefit, maternity benefit, etc.

Domestic Employees Act - Cap 344

This Act provides for the minimum wage payable and maximum number of hours of work of domestic employees.

Protection of Wages Act - Cap 351

This Act provides the form, manner, time and place where wages may or may not be paid to employees, and prohibits contractual deductions for bad work among other things.

Sugar Workers (Minimum Wage and Guaranteed Employment) Act - Cap 359

This Act empowers Cabinet to prescribe the minimum wage for sugar workers and guaranteed number of hours work to be provided. It also provides that an apprentice shall not be required to pay a premium.

Trade Union Act - Cap 361

Section 40 A of this Act protects an employee from dismissal due to lawful trade union membership or activities.

Better Security Act - Cap 160

This Act restricts workers employed in water, gas and electricity services from wilfully and maliciously breaking their contracts.

Severance payment Act - Cap 355 A

This Act provides for workers who are made redundant to receive severance payments. Section 45 of the Act also provides for the measure of damage to be applied in a wrongful dismissal decision by a court.

Public Holidays Act - Cap 352

This Act prohibits the opening of business on Public holidays but also provides for exemptions

Shop - Act - Cap 356 A

This Act provides in part for the number of working hours for shop assistants, mealtime leave and overtime pay and for other conditions of employment in respect of comfort and safety.

Radiation Protection Act - Cap 353 A

This Act provides for the safety of workers from ionizing radiation.

Quarries Act - Cap 353 A

This Act provides in part of the safety of workers in quarries

Accident and Occupational Disease (Notification) Act - Cap 338

This Act provides for the employer reporting accidents arising out of the course of employment

Factories Act - Cap 347

This Act provides for the safety, health and welfare of factory workers.

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TERMINATION OF THE CONTRACT OF EMPLOYMENT

Implied Notice

Warren v Super Drug Markets [1966] 54 DLR (2d) 183
BG Credit Corp. V. Da Silva () 7 WIR 530
Fuller v Rever Jamaica Alumina (1980) 31 WIR 304
Waite v Caribbean Int. Airways (1987) 39 WIR 61
T & K Home Improvements v. Hilton [2000] IRLR 593

Reasonable Notice vs Just Cause

Barbados Plastics v Taylor (1981) 16 Bar LR 79 (CA)
Andre Scholar v Hess Oil St. Lucia, Unreported H.C., St. Lucia, Suit No. 149 of 1984.
Decided 03-07-87
Grosvenor v Advocate Co. Unreported, Barbados H.C. No. 29 of 199. Decided Sept 93
- Dec. 94
Correia Jewellery v Forde Unreported. C.A. Barbados. Decided 19-09-92
Clarke v Nathu C. A. Barbados No. 16 of 1992. Decided 07-09-92

From Year to Year

Henderson v Henderson (1959) 1 WIR 337

Frustration - Sickness

Morgan v Mauser [1947] 2 All ER 666
Williams v Wason. [1990] IRLR 164
Villela v MFI Furniture {1999} IRLR 468

Frustration - imprisonment

Shepherd Ltd. v Jerron [1986] IRLR

Suspension

Gogay v Herfordshire cc [1999] IRLR 703

Mutual Agreement

Birch v University of Liverpool [1985] IRLR 165
Igbo v Johnson Matthey Chemical [1986] IRLR 215
Hellyer Ltd. V Atkinson & Dickinson [1994] IRLR 88

Fixed term, contingent and 'task' contracts

Wilshire L.C. v Natfhe [1980] IRLR 198
Brown v Knowsley BC [1986] IRLR 102
Dixon v BBC [1979] ICR 281 CA

Constructive Dismissal

Western Excavating v Sharp [1978] QB 761
Sovereign House Security v Savage [1989] IRLR 115 CA
Tanner v Kean [1978] IRLR 160
Woods v W M Car Services [1981] ICR 666
Edwards v Survey Police [1997] IRLR 456

Conduct justifying resignation

Bracebridge Engineering v Darby [1990] IRLR 3
Hilton Int. V Protopapa [1990] IRLR 316
Palmanor v Cedron [1978] IRLR 303
United Bank Ltd. v Akhtar [1989] IRLR 507
White v Reflecting Road Study [1991] IRLR 331
Dryden v Greater Glasgow HB (1992) IRLR 469

Acceptance of repudiation?

Thomas Marshall v Guinle [1979] Ch 277
London Transp. v Clarke [1981] ICR 335 (CA)
Rigby v Ferodo [1988] ICR 29 (HL)
Lewis v Motorworld [1986] ICR 157

Misconduct justifying dismissal

Pepper v Web [1969] 2 All ER 216
Wilson v Racher [1974] IRL 114 (CA)
Denco Ltd. V Joinson (1991) IRLR 63
Rouse v Mendoza (1968) 12 WIR 1
Lashley v Bayley (1992) 44 WIR 44
Gulstone v Anchor Life (1976) 27 WIR 68
Neary & Neary v Dean of Westminster (1999) IRLR 288
Montserrat Electricity v Latour (1989) 33 WIR 108 cf. With
Continent Biscuits v Shanks (1977) 24 WIR 267
Skinner Drilling v Hill (1962) 4 WIR 267
Harris v DaCosta & Musson (1979) 34 WIR 55

Damages

Bliss v South East Thomas RHA (1987) ICR 700 (CA)
Shove v Downs Surgical [1984] ICR 532
Cererns Software v Rowley (1999) IRLR 690
EMI Group v Coldicott [1999] IRLR 630
Raspn v Limited News [1999] IRLR 9
Johnson v Unisys (1999) IRLR 90

Injunction & Specific Performance

Irani v. Southampton. [1985] IRLR 203
Power v Brent LBC [1988] ICR 176 CA
Wadcock v London Borough of .. [1990] IRLR 223
Robb v London Borough of... [1991] IRLR 72
ICS v Hart [2000] IRLR 227
Hollis & Co. v Stocks [2000] IRLR 712
Wincanton Ltd. Granny [200] IRLR 716
Peace v City of Edinburg Council [1999] IRLR 417
William Hill Org. v Tucker [1999] ICR 291

Judicial Review

R v East Berkshire HA [1984] IRLR 27
R v Broxtowe Borough Council [2000] IRLR 329

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