

# 3

## Employment law

### Lead-in

Discuss these questions with a partner.

- 1 What types of situation does a lawyer who specializes in employment law have to advise on?
- 2 What types of difference do you think there are between employment law in different jurisdictions?
- 3 How important is it for a lawyer to be aware of international employment law? Why?

### Reading 1

1 Read the first paragraph of the article on employment law on the opposite page and answer these questions.

- 1 Why is international employment law changing?
- 2 When and why might a country decide to ratify a convention?
- 3 What is the main foundation for a lot of labour law conventions?

2 Complete the second paragraph of the article using the words in the box.

benefits dismissal drafting facility pension perspective race  
 reductions severance terminating transactions unions workforce

3 Match each of these comments and questions from an employer (1–8) with a practical issue mentioned in the article. Two relate to the same issue.

1 I'm thinking of letting Mark go, because at his age, the job's getting a bit too much for him.

2 When people retire, I want them to have a decent income.

3 We've got a new project, and I need to take on more staff.

4 How long do we need to continue paying staff when they are off sick?

5 A woman would never be strong enough to do that job. But what do I put in the advert?

6 Business is getting worse. I'm going to have to lose ten men. What do I need to pay them? They've worked for me for five years.

7 This guy is really lazy - I want to fire him. How do I go about it?

8 I presume we need a clause about the number of days annual leave?

### Language work

4 a Which verbs relate to these nouns?

- |                 |                  |
|-----------------|------------------|
| 1 consolidation | 4 discrimination |
| 2 ratification  | 5 legislation    |
| 3 termination   | 6 regulation     |

b One of the verbs has a different ending to the rest. Which one?

c Mark the stress on the nouns and verbs. What do you notice?

### International labour law and employment law

The field of international labour law and employment law is developing rapidly and changing to fit the needs of increasingly global business. While international law applies only between entities that can claim international personality, national law is the internal law of states that regulates the conduct of individuals and other legal entities within their jurisdiction. When the labour legislation or practice of a country has reached a certain level, it may be desirable for the country to ratify a convention that provides for a standard corresponding to the existing national situation. In international labour law, there are many conventions, based on the notion of social justice and designed to create international obligations for the states that ratify them. Ratification of respective conventions can contribute to the consolidation of national labour legislation by acting as a guarantee against backsliding by governments responding to economic conditions.

Lawyers, law students and counsel increasingly recognize the importance of having a global (1) \_\_\_\_\_ on labour and employment law. Corporate lawyers frequently have to deal with a variety of labour and employment problems internationally in structuring corporate (2) \_\_\_\_\_. They are expected to have a national and an international knowledge of requirements affecting practical issues such as establishing a (3) \_\_\_\_\_, hiring a (4) \_\_\_\_\_, (5) \_\_\_\_\_ employment contracts, (6) \_\_\_\_\_ the employment of or replacing employees, providing wages and (7) \_\_\_\_\_, dealing with (8) \_\_\_\_\_, carrying out workforce (9) \_\_\_\_\_, selling the business, and paying (10) \_\_\_\_\_ through redundancy or (11) \_\_\_\_\_ schemes. In addition, issues such as discrimination on grounds of gender, (12) \_\_\_\_\_ or disability may arise in advertising, recruitment and (13) \_\_\_\_\_ processes. Therefore knowledge of international labour law and the national employment law of particular countries is vitally important for counsel specializing in these areas.

## Reading 2

### 1 Answer these questions.

- 1 What is the difference between an act and a convention?
- 2 Where do you find an article, and where do you find a section?

### 2 These are the seven core International Labour Organization Conventions. Discuss what each one concerns with a partner. Do you know how they have been incorporated into your own national legislations?

- 1 Abolition of Forced Labour Convention
- 2 Convention Concerning Freedom of Association and Protection of the Right to Organize
- 3 Discrimination (Employment and Occupation) Convention
- 4 Equal Remuneration Convention
- 5 Forced Labour Convention
- 6 Minimum Age Convention
- 7 Right to Organize and Collective Bargaining Convention

### 3 Read these extracts from three of the conventions in Exercise 2. Which conventions are they from?

#### A

- 1 Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom and to formulate their programmes.
- 2 The public authorities shall **refrain from** any interference which would restrict this right or impede the lawful exercise **thereof**.

#### B

- 1 Workers shall **enjoy** adequate protection against acts of anti-union discrimination **in respect of** their employment.
- 2 Such protection shall apply more particularly in respect of acts calculated to:
  - a) make the employment of a worker subject to the condition that he shall not join a union or shall **relinquish** trade union membership;
  - b) cause the dismissal of or **otherwise** prejudice a worker **by reason of** union membership or because of participation in union activities outside working hours or, with the **consent** of the employer, within working hours.

#### C

**Notwithstanding** the **provisions** of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where **such** exist, **authorize** employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

### 4 Match these expressions (1–12) with their **highlighted** synonyms in the extracts.

- |              |                     |                     |
|--------------|---------------------|---------------------|
| 1 of this    | 5 conditions        | 9 these             |
| 2 agreement  | 6 stop themselves   | 10 give up          |
| 3 related to | 7 despite           | 11 in any other way |
| 4 because of | 8 have the right to | 12 allow            |

### 5 Read these extracts from other conventions and choose the best options.

Each member of the International Labour Organization which ratifies this Convention **(1) undertakes / promises** to **(2) oppose / suppress** the use of forced or compulsory labour in all its forms within the shortest possible period.

With a **(3) sight / view** to this complete suppression, **(4) recourse / resort** to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional **(5) measure / action**, subject to the conditions and guarantees **(6) hereto / hereinafter** provided.

## Listening

### 1 Discuss these questions with a partner.

- 1 What procedures are available for dealing with employment disputes?
- 2 What is 'mediation'?
- 3 Why is mediation popular?
- 4 What skills do you think a mediator needs?



'A tea break every four hours, a rest room with TV and air conditioning throughout the meeting, otherwise no agreement.'

**2** **9** **3.1** Listen to a conversation about being a mediator and decide whether these statements are true or false.

- 1 Hannah hasn't met John before.
- 2 John has been working in employment law for a very long time.
- 3 John knows a lot about mediating.
- 4 A mediator should not favour one party.
- 5 John's client continues to work with her boss.
- 6 Mediation should take place away from the employee's environment.
- 7 Parties in a mediation must tell the truth.
- 8 Mediating is similar to what lawyers do.
- 9 John admires Hannah's work.

**3** **9** **3.1** Listen again. Who must do these things in a mediation: the mediator (M) or the parties (P)?

- |  |   |
|--|---|
| 1 Be neutral.                          | 6 Identify needs and interests.         |
| 2 Adopt a more positive view.          | 7 Reach a mutually acceptable solution. |
| 3 Talk honestly and frankly.           | 8 Reduce tension and anxiety.           |
| 4 Create a safe environment.           | 9 Be able to read people.               |
| 5 Move towards improved relationships. | 10 Support both parties.                |

**Language work**

**4** Match the words in the left column (1–8) with the words in the right column (a–h) to make collocations from the conversation.

- |            |                |
|------------|----------------|
| 1 vested   | a control      |
| 2 follow   | b interest     |
| 3 self     | c the momentum |
| 4 informed | d move         |
| 5 mutually | e a career     |
| 6 common   | f decisions    |
| 7 career   | g acceptable   |
| 8 maintain | h aim          |



'So we're agreed: we'll go to mediation.'

**Speaking 1**

**1** Explain your job in the legal profession to a partner. If you haven't worked in the legal profession yet, imagine a job you would like to have. You can use the expressions that Hannah used to explain her job as a mediator.

**USEFUL LANGUAGE**

- |   |                                     |
|---|-------------------------------------|
| The important thing about a mediator is ... | A basic part of our training is ... |
| We must be ...                              | This means we can ...               |
| What we do is ...                           | The mediator's job is to ...        |
|   | You really have to be able to ...   |

**2 a** Complete the stages in a mediation (1–12) using the words in the box.

- agreement allow ask for build effect explain hear  
identify name positions probe trade-offs

- |                                  |   |
|----------------------------------|---|
| 1 _____ parties' stories         | 8 Focus on interests and _____ of parties |
| 2 _____ venting                  | 9 _____ areas of agreement                |
| 3 Begin to _____ trust           | 10 _____ desired outcomes                 |
| 4 Write an _____                 | 11 Discuss priorities and _____           |
| 5 Discuss _____ of not resolving | 12 _____ positives                        |
| 6 _____ the process              |   |
| 7 _____ understanding            |   |

**b** Complete this table with the above stages. Some stages may go in more than one session.

introduction	first joint session	private sessions	final joint session

**3** In groups of three, role-play the introductory session of a mediation.

**A** You are working on a major project for a construction company. You feel that one of your team members is not pulling his weight. At a meeting last week, you thought the report he prepared was sub-standard and you made a comment about the quality of the work. He became defensive and the subject was dropped, although there is still tension between you both, which is affecting the work. You are angry with him, but feel that the subject should have been handled differently. You are going to mediation to resolve the matter because you feel that the situation might grow worse.

**B** Your boss gave you a dressing-down because there were some errors in a major report you worked on that just went out. You were very angry because you had worked very hard and long hours to finish the report. You could have fixed most of the problems if your boss hadn't made so many last-minute changes. After your boss finished her outburst, you said 'You're impossible! I'm not going to deal with this!' and you left the room. You have come to mediation to vent and to figure out what to do.

**C** You are the mediator. Here is some useful language for you.  
*First, we're going to ...*  
*Then, we'll be ...*  
*So, to begin with ...*  
*Now, I'd like you to ...*  
*What do you expect from ... ?*

## Writing

**1** Read the letter below from a client, Mr Bennett, to his lawyer, Miss James. In what order should these points be in her letter?

- a summary of mediation process
- b recommendation of a mediator
- c offer to mediate yourself
- d your opinions
- e advice on dealing with the problem
- f reference to Mr Bennett's letter
- g attachment with further details

Norwood  
NP25 6TT  
4th February

Dear Miss James,

A difficult situation has arisen at work involving two of my key employees, and I am considering bringing in a mediator. Do you think this is a good idea? I am not completely sure what mediation involves. Perhaps you could give me a brief outline and also the name of someone I can contact.

Yours sincerely  
Jake Bennett

**2** For each of these phrases, indicate whether they would be used to refer to previous letter (RF), give an opinion (O), summarize (S), recommend (RC) or attach (A).

- 1 Depending on the situation, this can be a good idea.
- 2 Please see the attached document for further details on ...
- 3 Mediation can be a good way forward because ...
- 4 In the past, I have recommended ...
- 5 It is my opinion that ...
- 6 In response to your query regarding ...
- 7 Briefly, the process begins with ...
- 8 This process can be of benefit to all parties.
- 9 I would recommend a colleague of mine.
- 10 With reference to your letter of 8th October, ...
- 11 I think you should look into the matter further.
- 12 I attach a document that goes into more detail about the benefits of mediation.

**3** Write the letter from Miss James to Mr Bennett. Follow these steps.

- 1 Make notes and divide them into paragraphs.
- 2 Write a draft letter.
- 3 Check for mistakes.
- 4 Exchange your letter with a partner and check each other's work.
- 5 Write the final draft.

**4** Read these five extracts from letters a lawyer has received from different clients concerning employment issues. Work in pairs. First, discuss the issues, then write a short paragraph dealing with each one. Do not write complete letters.

- 1 I do not think that my employer is complying with health and safety rules in the workplace. What should I do?
- 2 I have recently been dismissed by my employer for selling trade secrets to a rival company. This is completely untrue!
- 3 Could you please send me some recent case studies on unfair dismissal? Thanks.
- 4 **When employing new staff, what should I be careful about concerning discrimination?**
- 5 I would like to hold a workshop for my employees on employment law and their rights. Do you think this is a good thing, and can you recommend a training company?

## Speaking 2

Work in pairs. You are going to talk for about a minute on one of the topics below. Each topic is accompanied by some words that you may wish to use.

- Before you start your talk, check that you understand all the vocabulary and, if necessary, do some research on the topic.
- After your partner's talk, ask at least one question about what he/she has said.
- Write a short summary of your partner's talk. Remember to:
  - mention the main points
  - give the most important information
  - use your own words.

### USEFUL LANGUAGE

My partner talked about ...  
 He/She began by saying that ...  
 He/She believes that ...  
 He/She considers ...  
 According to my partner, ...  
 The most important point he/she mentioned was ...  
 He/She finished by concluding that ...

### A Disciplining employees

- Importance of having clear procedures
- What these are/might be
- Difference between 'capability' issues and punishable actions
- What constitutes 'misconduct'
- allegation of misconduct
- appropriate
- ascertain the facts
- convene a disciplinary hearing
- disciplinary
- internal disciplinary procedure
- malingering
- proportionate to
- right to appeal
- sanction
- statutory procedures
- underperforming
- witnesses

### B Unfair dismissal

- What constitutes 'unfair dismissal'
- Advantages and disadvantages of employment tribunal over arbitration
- The system in your country
- allegations
- confidentiality
- defamation of character
- discrimination
- evidence
- follow procedure
- gross misconduct
- legal representation
- length of service
- record
- redundancy
- trade unions

## Reading: Part 5

## TIP

There are often references in either the sentences or the main text to something that has come before or that will follow. Check for words like *this*, *that*, *it*, *they*, *he*, etc.

Read this extract from a legal article and choose the best sentence (A–H) to fill each of the gaps. There is one extra sentence which you do not need to use.

## Resolving employment disputes through mediation

National procedures available for the resolution of employment disputes range from taking proceedings through the courts to having the disputes heard by employment tribunals. (1) \_\_\_\_\_. The adverse publicity can cause devastation for a well-established business, the distraction of an otherwise strong and efficient management team and a psychological effect on the business at hand. Once litigation has begun, it is often very difficult to stop. (2) \_\_\_\_\_. Frequently, companies find themselves resolving cases on the steps of the court after considerable economic, political and emotional cost.

(3) \_\_\_\_\_. An existing employee may contend that supervisory personnel have harassed them. A person whose employment has been terminated or who has been denied promotion may contend that such action constitutes discrimination based on race, colour, sex, national origin, age or disability. (4) \_\_\_\_\_. National laws, with the influence and assistance of international conventions, reflect social intolerance for certain workplace conduct, and court decisions are redefining the manner in which an employer must relate to its employees. (5) \_\_\_\_\_. They are often unique because the perceptions of men and women may differ as to what is appropriate conduct. (6) \_\_\_\_\_. When an employee's employment has been terminated or when a current employee makes a claim against his/her employer, it is generally in the interests of both parties to attempt to resolve the matter early through a procedure called 'mediation'. Mediation is especially effective in dealing with a myriad of legal, factual and emotional issues that are frequently present in a dispute. (7) \_\_\_\_\_

- A Because of this, employment disputes based on gender perceptions can be more difficult to resolve.
- B Each step of the process leads to the next.
- C All employees need to be aware of the complications that may develop from using alternative methods.
- D It can also provide a cost-effective and mutually satisfying way of negotiating what are otherwise difficult disputes.
- E Disputes between a company and its employees can arise in difficult situations.
- F However, one of the most damaging controversies for a business is a dispute with an employee.
- G Employment disputes grow out of relationships.
- H He or she may believe that their employment has been wrongfully terminated and that the termination was unfair or without good cause.

## Speaking: Part 3

## TIP

If you don't know what to say about one of the discussion points, don't worry. They are given to help you – you don't have to talk about all of them.

One of your clients has just started a new business. He wants your advice on what to consider when hiring staff.

## Discussion points

- Avoiding discrimination in advertising
- Checking authenticity of references and CVs
- What to include in contracts

## Writing: Part 1

## TIP

You must make some reference to all the notes made on the letter or you will automatically lose marks.

You are a lawyer, and one of your clients, Carl Posner, has just started his own business. Mr Posner has written to you asking for some advice on disciplinary matters. Read his letter, on which you have made some notes. Then, using all the information in your notes, write a reply to Mr Posner.

Dear Mr Tims,

As you know, I have recently set up my own business and I am now looking into establishing clear disciplinary procedures for the company.

I would be grateful if you could let me know what I should be aware of when setting up these procedures. Also, could you clarify the legal options employees have if they are unhappy with any disciplinary actions taken by me?

I look forward to hearing from you.

Sincerely  
Carl Posner

*very important - say why!*

*outline what to consider*

*what I should be aware of*

*clarify the legal options*

*mediation can save time and money!*

*describe employees' options*

*come back to me with any queries*

## Listening: Part 2



10

3.2 You will hear part of a conversation between a lawyer and her client about misuse of communications systems at work. For each question, choose the best answer: a, b or c.

## TIP

Remember that two of the three choices will be distracters. There will be some reference to them in the listening, but they will not actually answer the question. Don't choose an answer simply because you hear a specific word. Make sure it fits the meaning.

- 1 The client is mainly worried about ...
  - a a particular member of his staff.
  - b protecting the security of his computer systems.
  - c his staff's use of the internet.
- 2 The lawyer points out that ...
  - a employees spend a lot of time on social networking sites.
  - b employers can be considered responsible for their employees' misuse of the internet.
  - c employees can be prosecuted for writing bad things about their employers in emails.
- 3 The client wants advice on ...
  - a how he can legally film his employees at work.
  - b the laws of privacy.
  - c the options available to him.
- 4 In the lawyer's opinion, ...
  - a her client shouldn't create a bad relationship with his staff.
  - b her client needs to protect his own privacy.
  - c employees have greater rights than employers in this situation.
- 5 The lawyer suggests ...
  - a printing off a policy from the internet.
  - b monitoring as a last course of action.
  - c taking disciplinary measures against those who don't comply.