

**UNIVERSITY OF BOLTON**

**SCHOOL OF LAW**

**LAW PATHWAYS**

**SEMESTER 2 EXAMINATION 2021/2022**

**INDIVIDUAL EMPLOYMENT LAW**

**MODULE NO: LAW7031**

DATE: Tuesday 17<sup>th</sup> May 2022

TIME: 14.00 – 17.00

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**INSTRUCTIONS TO CANDIDATES:**

There are **FIVE** questions in this Exam. You are required to answer **THREE** questions. All questions in this section carry equal marks.

**ANY ANSWERS NOT WRITTEN IN THE ANSWER BOOK WILL NOT BE MARKED.**

Both question paper and answer book must be handed in at the end of the examination.

Answers must be completed in the student answer book provided. For example, for question 1 write 1 in the left margin followed by your answer on the lined page. Answers not entered in the answer book will be marked as incorrect.

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Please turn over when instructed to begin

1. When examining the variation of contracts, Brodie asserts that relational contract scholarship sees the law as unfit for purpose. As such, he argues that the strict requirements for variation of a new agreement and fresh consideration laid out in the textbooks are handled by the judges flexibly and are not always applied. He shows how the cases sometimes ignore the requirements of consideration and agreement and at other times insist on them rigidly. He claims that judges deploy these traditional concepts so that they achieve an equitable balance between the interests of employer and employee (p. 100).

**In light of Brodie's views and selected case law, critically discuss how far the law of the contract of employment is autonomous from the general law of commercial contracts.**

2. "I find it very difficult to see how a procedure which could be considered objectively fair if adopted by a reasonable employer could nonetheless be properly described as an unfair procedure within the meaning of Article 8. I accept that where Article 8 interests are engaged, matters bearing on the culpability of the employee must be investigated with a full appreciation of the potentially adverse consequences to the employee. But the band of reasonable responses test allows for a heightened standard to be adopted where those consequences are particularly grave." (Elias LJ in *Turner v East Midlands Trains Ltd* [2012] EWCA Civ 1470)

**Critically discuss this statement in light of the conflict between managerial control and the freedoms set out in the ECHR.**

3. If the aim was to prevent intimidatory behaviour, conditions had to be imposed upon those who are picketing peacefully, as section 220 TULRCA already required prior to the Trade Union Act 2016? Critically discuss this in light of the consequences introduced by the Trade Union Act 2016, whereby failure to meet these conditions (even for those who are picketing peacefully) include forfeiture of the protection of the statutory immunities and, for individual workers, protection from unfair dismissal?

4. Critically discuss if the UK is in breach of the Parental Leave and/or Equal Treatment Directive\*?<sup>1</sup>
  
5. **Critically discuss** the ability of the UK's current system of predominantly non-unionized employment relations to deliver employment rights effectively and fairly, particularly in light of the persistent risks of vulnerability in sectors impacted by the Covid-19 pandemic, such as hotels, restaurants, care homes, textiles, construction, security and cleaning, the absence of human resources (HR) departments and non-unionism (DTI, 2006: 25).

**END OF QUESTIONS**

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\*Currently still applicable in the UK as retained EU law.