



KSL PARALEGAL PROGRAM -PTP 209

ELEMENTS OF EMPLOYMENT LAW

William Agan
Advocate/Lecturer &
Patent Agent

EMPLOYMENT RELATIONSHIP-LAST SESSION

Last session in a nutshell:

- Sexual harassment policy
- Contract of employment
 - S. 9 : contracts of service for three months or more must be in writing
 - S. 10 : Employment particulars
 - S. 12 : a statement on disciplinary rules where employees are more than 50
 - S. 20: itemised pay statement,
- Duties of an employer
- Foreign contract

ASSIGNMENT-WHAT ARE THE DUTIES OF THE EMPLOYEE?

Refer to hand outs

REDUNDANCY & TERMINATION OF THE EMPLOYER EMPLOYEE RELATIONSHIP

- Termination sections 35 to 37 of the Employment Act 2007
- Redundancy section 40
- Summary dismissal
- Unfair termination
- Remedies for wrongful dismissal or unfair termination

SUMMARY DISMISSAL

- employee is dismissed without any notice, or
- with a notice period less than that allowed by a statutory or contractual term,
- where the employee has fundamentally breached his obligations under a contract of service, or
- the employee has engaged in wilful misconduct.

Case: *Pepper v Webb* (1969)

An employee responded to an employer's order to plant some flowers by stating, '**I couldn't care less about your bloody greenhouse and sobbing garden**'.

Held: the court held that the employee had repudiated his contract of employment.

WRONGFUL DISMISSAL OR UNFAIR TERMINATION

Meaning of wrongful dismissal:

- Wrongful dismissal is a **claim** based in **contract law** and it essentially the common law action for **breach** of contract

Meaning of Unfair termination:

- This is a **statutory** construction (interpretation) which aims to ensure that employers do not dismiss employees without a demonstrable reason and utilize a fair procedure if any.

WRONGFUL DISMISSAL OR UNFAIR TERMINATION


➤ An employee who has been employed for more than 13 months has a right to complain that he has been unfairly terminated.

Unfair termination (s 45):

- a) the employer fails to prove that the reason for termination is valid;
- b) the employer fails to prove that the reason is a fair reason related to the employer's operational requirements or is related to the employee's conduct, capacity or compatibility;
- c) that the employment was **NOT** terminated in accordance with fair procedure; and under **S46**;

WRONGFUL DISMISSAL OR UNFAIR TERMINATION

- d) where an employee was terminated for reasons of her pregnancy;
- d)going on leave, or a proposal to take leave;
- e) an employee's membership of a trade union;
- f) the participation in union activities after working hours, or with the employer's consent within working hours;

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- g) an employee's pursuit of office in a trade union;
 - h) an employee's refusal to join or leave a trade union;
 - i) an employee's race, colour, tribe, sex, religion, political opinion or affiliation, nationality, social origin, marital status, HIV status or disability;
 - l) an employee's initiation of legal proceedings or complaint against his employer, unless it is shown that the complaint is without basis; or an employee's participation in a lawful strike.



THANK YOU - Q & A