

Chapter 4: Termination

Question 1

So long as the employer gives an employee reasonable notice, an employer will be considered to have lawfully dismissed an employee. To what extent does this reflect the position at common law?

Commentary

This question sets out a proposition by Lord Millett in *Reda* to the effect that in any contract where there is no express provision for its determination, the general rule is that it may be brought to an end by one party giving reasonable notice to the other. As most contracts are of indefinite duration (i.e. they are not for a fixed term), unless the contract expressly states otherwise they may be terminated by reasonable notice.

In this question the examiner is asking you to explore the development of the law on termination since this statement, particularly in light of the fact that it would be extremely unusual these days for a contract not to contain express rules about notice and there is also the statutory notice regime contained in the Employment Rights Act 1996. Students would typically be expected to have a good understanding of the ratios in *Ridge* and *Malloch*, to explore what is meant by 'termination' and dismissal, and to examine the different ways that an employer may dismiss an employee.

Question 2

The damages regime for cases of wrongful dismissal is unduly narrow and takes insufficient account of the special nature of the employment contract.

Commentary

This question is directed at the *Johnson* line of authority. Students should start with the general proposition set out in the House of Lords case of *Addis* about damages being confined to financial losses only before proceeding to discuss the cases in which the courts have explored whether injury to feelings damages should be awarded in the context of wrongful dismissal for the manner of the dismissal. It is essential to show that you have a good grasp of *Johnson*, *Eastwood* and *Edwards* and can confidently state what the law now is in relation to this issue, the policy considerations inherent in these cases, and the questions that remain unanswered.