

Revision Summary Chapter 28

The termination of employment

- An employee whose employment contract is terminated in a manner that does not constitute dismissal cannot claim that he was wrongfully or unfairly dismissed and is not entitled to redundancy pay.
- Where the employee voluntarily resigns, there will be no dismissal.
- Where the employment contract becomes frustrated, this will not constitute a dismissal for the purposes of unfair dismissal, but will constitute a dismissal for the purposes of redundancy payment.
- The death of the employer may constitute dismissal, depending on the circumstances.
- Where both parties agree freely to the discharge of the employment contract, this will not amount to a dismissal.
- Either party can terminate a contract by giving notice. Where the employer gives notice, the termination will amount to dismissal. Where the employee gives notice, the termination will usually not amount to dismissal.
- Where a limited-term contract expires without renewal, the employee will be regarded as dismissed.
- Summary dismissal without notice occurs due to the conduct of the employee. Constructive dismissal occurs where the employee resigns due to the conduct of the employer.
- Where, in breach of contract, the employer terminates the contract of employment, the termination may constitute a wrongful dismissal.
- The primary remedy for wrongful dismissal is damages, but in exceptional cases, the tribunal may be willing to enforce the contract by granting an injunction. A declaration can also be made.
- Employees have the right not to be unfairly dismissed, provided that they have at least two years' continuous service. Where a dismissal is automatically unfair, this requirement does not apply.
- The employer must provide a reason for the dismissal. Failure to do so will make the dismissal unfair. The employer must then establish that the dismissal was for one of five *prima facie* fair reasons. If the dismissal was not for one of these reasons, it will be unfair.
- A *prima facie* fair dismissal can still be unfair if the decision to dismiss was not within the band of reasonable responses.

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- A tribunal may also order that the unfairly dismissed employee be reinstated to his old job or re- engaged to a similar job.
- The principal remedy for unfair dismissal is an award of compensation, which consists of a basic award that is based on length of service, and a compensatory award that is based on the employee's actual loss.
- Redundancy occurs where an employee is dismissed because (i) the business ceases; (ii) the place of business at which the employee carries on work ceases to exist; or (iii) the need for labour diminishes.
- Employees made redundant are entitled to redundancy pay provided that they have two years' continuous service.
- Redundancy pay is calculated in the same way as the basic award of compensation for unfair dismissal. Redundant employees are not entitled to an additional element of compensatory pay.