Employment law, or labour law as it is historically known, concerns regulation in the workplace. That is, it creates rights and responsibilities in the employment relationship, between employers and employees. It is often suggested that it relates to a cycle, an ever-revolving motion involving three tasks – creating, maintaining and terminating employment (Figure 1.1). Forever revolving, since as soon as a vacancy arises the cycle recommences.

**Figure 1.1** The cycle of employment
DEFINING EMPLOYMENT LAW

Employment law is often labelled as either *individual*, i.e. the law relating to the employer-employee relationship, or *collective*, i.e. the relationship between the employer, the employee and a third party, normally the government and/or trade unions.

Perspective on employment law

Employment law cannot be fully appreciated unless its historical context is explained, since many of the legacies of different political ideologies and eras in both Britain and the European Union have left their mark on employment law. Below, a basic outline will chart the historical pathway of employment law.

*The twelfth century to 1960: unregulated (laissez-faire).* Employment law, in its current highly regulated form, is relatively modern. It was not until the 1960s that it was deemed necessary to regulate the workplace, in terms of both safety and the employment relationship. Prior to the 1960s, *laissez-faire*, or non-interventionism, existed. Although, the ‘master-servant’ relationship was the hallmark of this era, the master controlling what his servants did and did not do.

*The 1960s – minimum standards and collective.* In sharp contrast to the *laissez-faire* era, minimum statutory standards emerged in the 1960s. Primarily these were safety-based, but they also covered some employment rights. For example, the 1965 Redundancy Payments Act, setting out minimum payments for economic dismissal.

*The 1970s – statutory.* In Britain during the 1970s the ‘industrial muscle’ of the trade unions prevailed in a ‘white hot’ revolution of business change. Strikes dominated, owing to economic conditions, and management, reacting to such financial situations, brought about much change management in the workplace, causing many reorganisations, redundancies and dismissals. As a result, this era became three-dimensional (tripartite) – the trade unions and employers were involved in collective bargaining (i.e. negotiation about terms and conditions); industrial strife meant that employment relations were often hostile (‘us and them’); and, whilst the government sought to readjust employment laws by removing barriers, the United Kingdom’s recent membership of the then European Economic Community (now European Union)
began to take effect, seeking, through the supremacy of European law over UK domestic law, to rebuild collective and minimum-standard employment rights. The latter causing conflict between a progressively developing social Europe and a Euro-sceptical British government following a US-style model.

The 1980s – individualism. A significant change of ideology came about in the 1980s, the ‘Thatcher’ era, as it is more commonly known. On Margaret Thatcher’s rise to power in 1979 her consecutive governments sought to curb trade union power and influence. Consequently, a decline in collective bargaining between trade unions and employers occurred. The Thatcherite ‘market forces’ ideology seeking to remove minimum standards, replacing it with freedom and individualism. During this period of employment law the employment relationship became unregulated, against EU ideals and policy. Britain in fact sought an opt-out from the European Social Charter of 1989, which set out basic employment rights for all citizens of the European Community.

The 1990s – European social compliance? The Conservative government, led by John Major, which replaced Mrs Thatcher’s last administration in 1990, changed stance and sought to implement European laws, except for the Social Charter, from which Britain had negotiated an opt-out. Following such a change of position, the United Kingdom saw some basic minimum forms of regulation returning to the workplace, such as on contracts and working hours.

The twenty-first century – the ‘Third Way’. Following the election of the New Labour government, under Tony Blair, in 1997 the United Kingdom signed up to the Social Charter of 1989. Further it encouraged full compliance with EU regulation in the workplace. In fact, since the mid-1990s the EU has produced a vast array of workplace regulations on working time, parental leave, part-time work, fixed-term work, business transfers and information and consultation. Consequently, the United Kingdom’s new approach has been to embrace the contractual basis of modern employment law, whilst supporting it with increasing statutory minimum standards from the European Union.

Sources of employment law

The United Kingdom’s sources of employment law are essentially legislation and case law. In terms of legislation, there is, at the national level, a
body of both primary and secondary legislation comprising the statutory regulation of this area of law. At the EU level there are treaty provisions, directives and regulations regulating the labour law of the Member States. At the international level, there are, for example, ILO conventions which the signatory states are expected to observe. The case law from both national courts and the European Court of Justice (ECJ) is important in terms of the interpretation of this legislation. Case law is also important in that the employment relationship is based upon the contract of employment, so principles of contract derived from case law form an important part of the subject. In employment law, the main sources of law derived from cases come from the decisions of the Employment Appeal Tribunal, High Court, Court of Appeal and House of Lords at domestic level, and the decisions of the ECJ and the European Court of Human Rights (ECHR) at the European level.

In addition to these two main sources of employment law there is a range of less formal ‘sources’, in the sense that these may have an influence on how the formal law is interpreted, applied and changed. These informal sources include: the codes of practice and reports issued by the EOC, CRE, DRC and the Health and Safety Executive; EU Commission recommendations; the Social Policy Agenda and the Social Dialogue at EU level. At the workplace level, informal, voluntary sources of law include collective and workforce agreements, works rules (i.e. the workplace rules, often contained in rule books or handbooks, issued by management to employees), and internal codes of practice and policies adopted by individual employers.

Students of employment law should be aware of these formal and informal sources of law, and of their interplay at the various levels, e.g. workplace, national, European and international.

**KEY LEGISLATION**

Students of employment law should have knowledge of the centrally important provisions contained in the key legislation which forms the legislative backbone of the subject. The primary legislation is the main focus of this section, although secondary legislation, mainly in the form of statutory instruments, forms an important part of regulation in this area. In the sphere of individual labour law, the Employment Rights Act 1996 is
the primary legislation regulating, *inter alia*, the law relating to: unfair dismissal; redundancy; notice rights; protection of wages; protected disclosure; time off work; maternity, adoption and parental leave. At the collective level, the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) concerns, *inter alia*, the law governing trade unions, their relationship with their members and employers, industrial action and collective bargaining, including the important area of the statutory recognition of trade unions contained in Schedule A1 of the Act. Certain aspects of wages have been regulated by the National Minimum Wage Act 1998, which stipulates the minimum wage for certain categories of worker in any pay reference period.

Other important secondary legislation includes: the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/1794 (TUPE), which safeguard certain employment rights upon the transfer of a business (or part of a business) as a going concern. These regulations were supposed to implement the Acquired Rights Directive (Directive 77/187/EC) (the ARD); the Working Time Regulations 1998, SI 1998/1833, which regulate working hours, daily and weekly rest periods and rest breaks, annual leave and night work. These regulations implement the Working Time Directive (Directive 93/104/EC, which was amended by Directive 2000/34/EC – the ‘Horizontal Amending Directive’: the original Directive 93/104/EC is soon to be consolidated by Directive 2003/88/EC, in force from 2 August 2004 (the WTD); and the National Minimum Wage Regulations 1999, SI 1999/584, which contain detailed provisions concerning the minimum wage.

In the field of discrimination law, the key statutes are the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995, covering sex, race and disability discrimination respectively. It should be noted that these statutes regulate a wider area than employment law, as they include the provision of goods, services and facilities. Generally, the student of employment law need only concentrate on the employment parts of these statutes. The Equal Pay Act 1970 (EqPA) should be considered alongside the SDA in any study of sex discrimination law, as this statute concerns the elimination of sex discrimination from pay structures. Important (and recent) secondary legislation in the discrimination field are the Employment Equality Regulations. There are two sets of these: the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, and

Other important pieces of legislation in labour law are: the Health and Safety at Work, etc., Act 1974; the Human Rights Act 1998; and the various Employment Acts.

At EU level, Article 141 (former Article 119) of the Treaty, the provision concerning equal pay for equal work or work of equal value, has been immensely significant in the development of equal pay law at the domestic level. Furthermore, several directives have been centrally important in domestic law, e.g.:

- Parental Leave Directive (Directive 96/34/EC) (the PLD).
- Part Time Workers Directive (Directive 98/2) (the PTWD).
It will be seen from the above list that EU law has had a major influence on the development of many aspects of domestic employment law.

**INSTITUTIONS**

A network of key institutions exists, and students of employment law should be familiar with them.

**Advisory Conciliation and Arbitration Service**

ACAS was established in 1974, gaining statutory recognition under the Employment Protection Act 1975. Its head office is in London and it has eleven regional offices across the United Kingdom. It is an independent organisation, albeit that it is government-funded. It is governed by a council, consisting of a chair appointed by the Secretary of State for Trade and Industry, and nine members representing employers, trade unions and independent members (usually lawyers and/or academics).

Arbitration is a voluntary process at the collective level whereby the parties to a dispute agree to submit to the decision of an arbitrator, although the decision itself is not legally binding. (It is expected, however, that, having agreed to submit to this process, the parties will observe the terms of any decision arising from it.) Under TULRCA, s. 212, ‘Where a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute,’ refer the matters in dispute to arbitration. Arbitration should be considered by ACAS only after consideration has been given to whether conciliation or negotiation could resolve the dispute. (These should be attempted before arbitration is offered.) Arbitration is carried out through the Central Arbitration Committee (see below) or by an arbitrator selected from a panel of names kept by ACAS.

**The Commissions**

There are currently three commissions in the field of discrimination law: the Equal Opportunities Commission (EOC); the Commission on Racial
Equality (CRE); and the Disability Rights Commission (DRC). The EOC covers sex discrimination and equal pay, the CRE deals with race discrimination and the DRC covers disability discrimination. The government has announced that these three bodies will merge in 2007 to form a new consolidated body overseeing equal opportunities and human rights at work.

Equal Opportunities Commission

The Equal Opportunities Commission (EOC) was established under the Sex Discrimination Act 1975 (SDA), s. 53. It has a statutory duty to work towards the elimination of discrimination and to promote equal opportunities. Further, it has a duty to keep the working of the relevant legislation under review, i.e. the SDA and the Equal Pay Act 1970. The EOC can assist in bringing cases to Employment Tribunals and the courts. It can also undertake and/or fund research and educational activities (SDA, s. 54), as well as issue codes of practice (SDA, s. 56A). Examples are the Codes of Practice on Sex Discrimination, Equal Opportunity Policies and the Code of Practice on Equal Pay (1997). The EOC also has the power to conduct a formal investigation ‘for any purpose connected with the carrying out of [its] duties’ SDA, s. 57(1)). Such formal investigations must be conducted under the provisions of the relevant regulations, the Sex Discrimination (Formal Investigations) Regulations 1975, SI 1975/1993.

Commission for Racial Equality

The Commission for Racial Equality (CRE), which is similar to the EOC, was created by the Race Relations Act 1976. It has similar powers and duties to those of the EOC, noted. It can issue codes of practice (RRA, s. 47). Examples include: the Code of Practice for the Elimination of Racial Discrimination (1983) and the Code of Practice on the Duty to Promote Racial Equality (2002). These codes do not have statutory force but they are admissible in evidence and may be taken into account by tribunals and courts in determining any question under the relevant statutes: see RRA, 47(10). Like the EOC, the CRE can instigate formal investigations ‘for any purpose connected with the carrying out of [its] duties’ (RRA, s. 48(1)), but only where they have reasonable suspicion
that unlawful acts of discrimination are taking place (see *R v. CRE ex parte Prestige Group plc* (1984), a case on a CRE investigation under the RRA). Formal investigations must be conducted under the provisions of the Race Relations (Formal Investigations) Regulations 1975, SI 1977/841. If, following a formal investigation, the CRE becomes satisfied that a person is committing or has committed, *inter alia*, any unlawful discriminatory acts or practices, they may issue a non-discrimination notice to employers (RRA, s. 58(2)).

**Disability Rights Commission**

The Disability Rights Commission (DRC) was established under the Disability Rights Commission Act 1999. From its creation on 25 April 2000 the DRC’s main duties have been to work towards eliminating discrimination against disabled people; to promote equal opportunities for disabled people; to keep the DDA under review; to provide information and advice to disabled people, employers and service providers. It has the power to issue codes of practice (DDA, s. 53A) and to support individuals seeking to enforce their rights (DRCA, s. 7). It has similar powers to the other two Commissions in terms of conducting investigations and issuing non-discrimination notices, similar to the other two Commissions (DRCA, ss. 3, 4).

**Commission for Human Rights and Equality**

The government, following the publication of a White Paper of 12 May 2004, has indicated its intention to integrate the three relevant
Commissions discussed above into a single body. The new unified body will have the task of promoting diversity whilst protecting equality and human rights.

**Employment Tribunals**

Employment Tribunals (ETs), formerly industrial tribunals, were established under the Industrial Training Act 1964 to consider employers’ appeals against training levies, and their jurisdiction was extended under the Redundancy Payments Act 1965 to consider claims relating to redundancy payments. However, their jurisdictional work load has massively increased since 1972 (see Chapter 10 for further details). What is significant about Employment Tribunals is that they form, alongside the Employment Appeal Tribunal (EAT), a specialist set of informal court-like institutions to adjudicate upon disputes between employers and their employees (Figure 1.4). Employment Tribunals are composed of a legally qualified chair and two wing (lay) members. They are regionally organised. The EAT sits in London and Edinburgh, and is composed of a judge and two lay members.
In the next chapter we identify the employment relationship – employment status.

INTERACTIVE LEARNING

1. List and explain the main sources of British employment law.
2. What institutions and how can they assist employers and employees alike in the United Kingdom?
3. Summarise the key UK legislation on employment law.