COLLECTIVE LABOUR LAW (I) TRADE UNIONS – COLLECTIVE BARGAINING

Preparation

In order to prepare for this seminar you should read from one or two of the textbooks listed below. You should then look at and consider the questions which will be discussed in class. You should read any specific material cited and undertake any specific tasks set.

General Reading:
Selwyn chapters 21 and 22 and pp.645-662*
Deakin and Morris chapters 7-11*
Honeyball & Bowers chapters 13-15 and pp. 457-461*
Painter and Holmes chapters 10 & 11*
Pitt, chapters 10-13*
Smith & Wood chapters 9-10*
Davies chapters 10-12*

Journal Reading:
Brian Bercusson, “The European Social Model Comes to Britain” (2002) 31 ILJ 209
Keith Ewing, “The Function of Trade Unions” (2005) 34 ILJ 1*
Mark Hall, “Assessing the Information and Consultation of Employees Regulations” (2005) 34 ILJ 103*

Advanced Reading:
Paul Davies and Mark Freedland, Towards a Flexible Labour Market: Labour Legislation and Regulation Since the 1990s (OUP, 2006) chapter 3
**Question 1:**

What is a trade union? Does a trade union enjoy separate legal personality?

Outline the function, legal status, criteria for independence and criteria for listing of trade unions.

**Specific Reading:**
Selwyn chapter 22*
Deakin and Morris pp. 694-705*
Honeyball & Bowers pp. 329-351*
Painter and Holmes pp. 651-680*
Pitt, chapter 10*
Smith & Wood pp.564-600*

**Question 2:**

Why is the right to organise so important in industrial relations? Do you believe that there is a continuing role for trade unions in the UK?

**Specific Reading:**
Deakin and Morris pp. 705-709*
Keith Ewing, “The Function of Trade Unions” (2005) 34 ILJ 1*

**Question 3:**
Critically evaluate the effect and impact of Article 11 of the European Convention of Human Rights on domestic collective labour law.


**Specific Reading:**
Deakin and Morris pp. 675-685, 709-741 and 750-752 and 889-942*
Painter and Holmes pp. 662-680 and chapter 11*
Selwyn chapters 21 and 22 and pp.645-662*
Honeyball & Bowers chapter 15 and pp. 457-461*
Pitt, chapter 12 & pp. 413-433*
Smith & Wood pp. 651-707 and pp.720-728*
Davies chapters 10 & 11*

S 146 TULRA 1992, ss 29 – 32 Employment Relations Act 2004

*Wilson v Palmer* [2002] IRLR 566
*ASLEF v United Kingdom* [2007] IRLR 361
*Metrobus v UNITE* [2009] IRLR 851
*BA v UNITE* [2010] IRLR 423
*BA v UNITE* [2010] EWCA Civ 669; [2010] ICR 1316

**Question 4:**
Explore the Statutory Protections of Trade Union Membership and Activities contained in the Trade Union and Labour Relations (Consolidation) Act 1992

**Specific Reading:**
Selwyn chapter 21
Deakin and Morris chapter 10
Honeyball & Bowers pp. 343-370
Painter and Holmes pp. 705-738
Pitt, chapter 11
Smith & Wood pp. 610-628
Davies chapters 10 & 11
Collective bargaining seeks to ‘convert formal into factual freedom of contract between employer and workman, by raising the latter to a level of equality of bargaining power’

This is analogous to the operation of the implied term of MTC which operates during the employment relationship to ameliorate inequality of bargaining power btw employer and employee.

One may wonder if MTC would have developed quite the same way if collective bargaining would not have become less prevalent.

The relationship between economic, political, and legal environment and the fortunes of trade unions is a controversial issue:

Economic: Bain has argued that trade union membership is directly connected with changes in the economy. Unemployment caused unions to contract because power and willingness to act collectively fell when workers were worried about losing their jobs. If this is true, then the current rising rates of unemployment in this period of recession would suggest that unions are of declining importance. Alternatively, if we are coming out of the recession, perhaps there is hope for a brighter future for TUs

The future of union rests on 3 factors
- I) there is the elasticity of demand for labour, which determines the bargaining power of workers
- II) the presence of a strong incentive for workers to act collectively.
  - Historically inflation was the chief incentive – this year in particular, the rising rates of inflation may mean that there is once again a stronger incentive for workers to act collectively
- III) ideological resources available for workers and the rules and laws that constrain the behaviour of the actors (ie the rules that determine to which extent workers are able to turn bargaining power into results)
  - Conservatives have restricted the ability of unions to deploy what power they have to the extent that it is harder to impose costs on employers, which makes it harder to win a strike

Technological improvements and developments have made it cheaper and easier to replace labour with capital. It has been thought by labour economists that these technological improvements impact greater on the lower skilled workers – skill-based technical change. Such change thus weaken the bargaining position of lower skilled worker, so that incentives to unionise would be diminished

Nowadays labour costs are increasingly the highest cost in proportion to the overall business costs

Exception to this gloomy picture for the future of unions:
• **Public sector workers** that now operate in monopolistic markets have been better placed than most to maintain union organisation, and employers have remained generally willing to bargain

• Public-sector pay policies have contributed to a sense of grievance as worker have seen their position in the wage distribution deteriorate

• Introduction of an audit and performance culture has led to work intensification

• These factors provide powerful incentives for workers to act collectively

• However, even here the employee's face the problem that work costs are often a high proportion of the total costs and therefore employers are reluctant to give into the demands of the union

• **Problem in the UK of decentralised collective bargaining** – this has drastically limited the ability of union leaders to follow either the strategy of organising or partnership

• As a result of **decentralised collective bargaining**, the **large merged super unions** consist of separate divisions, which correspond to industries, with each division consisting of a group of **de facto** enterprise unions

• This type of organisational form does not make for either representational or administrative efficiency

• The organisational complexity of super unions makes is extremely difficult for members and leaders to exercise strategic choices about the union’s direction

• Unionism is Britain continues to face a harsh and inhospitable environment

• Economic changes have removed union bargaining power

• Legal changes have severely restricted the ability of unions to exercise what little bargaining power they still possess

• The **rebirth of inflation** may increase the incentive for non-union workers to unionise

• **Political change and the current economic crises** is arguable causing the word trade infrastructure to collapse; this might ring a less competitive economy in which it is easier for unions to operate

• It is therefore important not to write off the TU movement

*In spite of the gloomy picture one might paint of the decline of importance of unions, perhaps it is just that there functions should be and have been in a process or transformation*

*We now live in a service age and have moved away from an industrial age. The service age is characterised my heterogeneity which makes it increasingly difficult to bargain collectively and to as workers will be exposed to different terms and conditions of employment and there is less coherence btw the types of jobs they are doing*

*This is particularly the case in decentralised super unions which operate across different industries*
As a result the contracts of less workers will be covered by the collective agreements and there is less incentive for the workers to take collective industrial action to amend their terms and conditions of the individually negotiated contracts of employment

This means that the function of TUs as a regulatory body in the workplace has seriously diminished

Whether this is a good thing is questionable. Worker’s will have a greater burden of pushing their rights through individually which may be less effective than through means of collective bargaining, as the employer is not, as such put under pressure.

Individuals may face greater costs if they have to pay for legal representation in tribunal proceedings, whereas before they could be represented by union members

It can be argued that the decline of trade unions is lamentable, as it is necessary for a deliberative democracy.

**Ewing - Function of a Trade Union**

- Trade unions functions can be broadly categorised into
  - i) service function
  - ii) regulatory function
  - iii) government function
  - iv) public administration function
- In recent years we have been witnessing the emergence of a new supply side unionism with a dilution of their representative and regulatory function
- The service function --- provision of services and benefits to its members i) friendly society benefits such as health & employment benefits; ii) professional services such as legal advice and representation
- Notably these are not distinctively TU forms of support
- **Representation function** --- one of the most characteristic functions of TUs is their role of representing employee’s interests in the workplace such as providing professional support in a forum for handling individual disputes, or collective representation in which case rep may be close to the regulatory function of the TU
- This may include consultation and bargaining on the behalf of the workforce as a whole
- **Regulatory function** --- TUs can make rules that extend beyond their members directly through multi-employer collective bargaining, and indirectly through regulatory legislation which trade unions play a part in securing
- In a regulatory system of collective bargaining, it is less likely that the worker will be a member of a trade union in order to be covered by the collective agreement
• **Governmental and public administration function of trade** --- TUs must engage with government in order to help them secure the legislation that will enable them to perform their other functions. They also need to engage with gov in order to perform their regulatory function to the extent that the

• this function is 2 dimensional:
  i) entails the organised political representation of working people both as a means of **restraining the power of the state** and a means of witnessing the power of the state
  ii) TUs being engaged in the process of government in the sense of being involved in **the development, implementation and delivery of government policy**.

• In this sense TUs become an administrative agent of the state

• Where TUs are instruments of the delivery of certain economic objectives such as controlling wage inflation

• There is an emerging trend which sees TUs moving towards service, governmental and public administration functions

  There is also a corresponding attempt by government to shape the representative role of unions and to dilute their regulatory role - *It can be argued that as a result of the diminishing regulatory role employer's may experience greater freedom to exercise their prerogative which might have a detrimental effect on employees --- less scope for terms and conditions to be regulated by collective agreement as a result employer may take advantage of his relative strength in bargaining power against the employee and enforce more onerous terms and conditions of employment.*