

Industrial Torts

- Largely not used today however, employers use sometimes against unions
- Note: If you have protected industrial action – then employer does not have standing to sue
- Employer can sue once there is no protected industrial action
 - o Does not cover, physical injury or property damage etc

Industrial Action (protected)

- At common law it is allowed but it can amount to breach of contract
 - o You don't work = you are in breach of a lawful and reasonable order
- FWA establishes procedure for protected industrial action and also sets procedure for suspending industrial action
- FWA allows protected industrial action
 - o If you take protected industrial action, none of the Industrial torts apply
 - o Part 3.3 section 406 FWA

Termination of Employment (Common law)

- About 5% of employees now are still covered by common law
- Common law position:
 - o There is no specific performance given
 - o Master/Servant relationship
 - o Master can terminate K for any reason or no reason at all
 - o You can only sue for damages under common law
- Authority for Terminating relationship
 - o Express Terms in Contract

Termination of Employment (Legislation FWA)

- Original position is that FWA termination is established using common law
- Two types of dismissals under FWA: 1. Unfair Dismissal 2. Unlawful Dismissal
- Unfair Dismissal
 - o Chp 3 – part 3-2 of FWA.
 - o Unfair dismissal only applies to national employees and employers; s380
 - o Person is protected against unfair dismissal who has completed minimum employment period, and “one” of the following apply: s382
 - Person is under a modern award
 - Person is under an enterprise agreement
 - Person's income is under the high income threshold; s382 (\$133K)

MODEL ANSWER:

Introduction

Relying on clause 12 of the EB Peter was dismissed from ACE Telecasters Pty Ltd, with no notice and no pay in lieu, on the grounds that he had brought the organization into disrepute and acting in an unauthorised manner. The evidence of this was the telex he sent on 20 February. They said he had disobeyed instructions by acting in an unauthorised manner, and for misconduct.