Contents

	Preface	page xxiii
	Acknowledgements	xxvi
	Table of Cases	xxvii
	Table of Statutes	li
	Table of Statutory Instruments	lxxi
	Table of European Union Instruments	lxxx
	Table of ILO Instruments	lxxxiv
	Table of Other International Instruments	lxxxvi
	List of Abbreviations	lxxxviii
Part I	Introduction	1
1	Nature and Sources of Labour Law	3
	What is Labour Law?	4
	Significance of Labour Law	4
	The Employment Relation	6
	United Kingdom Labour Law	9
	European Union Employment Law	11
	Competence	11
	Effects	14
	Compliance	16
	Regulatory Standards with Criminal Sanctions	17
	Individual Civil Claims	18
	Collective Bargaining	19
	Effectiveness of Labour Law	22
	Sources of Workplace Conflict	23
	Labour Courts and Dispute Resolution	26
	Internal Dispute Resolution Procedures	27
	Conciliation	27
	Arbitration	28
	Employment Tribunals	29
	The Employment Appeal Tribunal and the Courts	34

	Prospects for Labour Law	36
	Flexibility and Security	36
	Vulnerable Workers	38
	Social Exclusion	40
	Regulatory Strategies	40
	Voice at Work	42
	Work/Life Balance	43
	Human Rights	44
	Globalisation	44
2	Globalisation and Labour Law	47
	Introduction	48
	International Standards	49
	ILO Conventions	50
	ILO Supervision	52
	Global Trade	54
	The Social Clause	54
	Legacy of the Social Clause	55
	Working Abroad	58
	Rome I Regulation and Contract	59
	Rome I Regulation and Statute	60
	Posted Workers and Working Conditions	63
	Core Standards	63
	Raising Standards	65
	Globalisation and Exploitation	67
	Morecambe Bay	67
	Gangmasters (Licensing) Act 2004	68
	Forced Labour, Modern Slavery and Human Rights	71
	Convention Rights	71
	British Law	73
	Global Corporations	76
	Codes of Conduct	77
	Global Framework Agreements	79
	OECD Guidelines for Multinational Enterprises	81
	OECD Guidelines in Outline	81
	OECD Procedures in Operation	83
	Global Unions	85
	Global Union Organisation	86
	Global Union Action	87
	Global Labour Law	89
	Right to Bargain Collectively	90
	Right to Collective Action	91
	Conclusion	92

Part II	The Contract of Employment	97
3	Terms of the Contract of Employment	99
	The Contract of Service	99
	Freedom of Contract	100
	Implied Terms and the Standard Model of Employment	101
	Criticisms of the Contractual Model	104
	Indeterminacy and Plurality of Sources of Rules Governing	
	Employment	108
	Regulating Express Terms	110
	Disclosure of Terms of Employment	115
	Written Statement of Particulars	115
	Implied Duty of Disclosure	120
	Unfair Terms	122
	Organisational Rules	123
	Collective Agreements	128
	Legal Enforceability	128
	Incorporation	129
	Enforcement by Employees	130
	Enforcement by Employers	133
	The Binding Force of Collective Agreements	135
	The Autonomy of Labour Law	136
4	Authority and Co-operation	138
	The Legal Construction of Hierarchy	138
	Mutual Trust and Confidence	143
	Good Faith	147
	Arbitrariness and Irrationality in Discretionary Decisions	148
	An Essential Foundation of the Contract?	150
	Performance in Good Faith	152
	Loyalty and Confidentiality	154
	Duty of Loyalty	155
	Confidential Information	157
	Lawfulness	159
	Health and Safety Risks	160
	Tax Evasion	160
	Immigration	162
	Restraint of Trade	163
5	Flexibility and Precarious Work	168
	The Need for Flexibility	169
	Unilateral Variation of Terms	171

	Enforcement of the Contract	171
	Claim for Unfair Dismissal	173
	Variation by Collective Agreement	175
	Changing the Job	177
	Flexibility and Variation Clauses	179
	Temporary and Casual Employment	184
	Umbrella Contracts	188
	Continuity of Employment	192
	Conversion of Fixed-term Contracts into Permanent Contracts Precarious Work	195 196
6	The Personal Scope of Labour Law	198
	The Challenge of Employment Status	198
	Contracts of Employment and Contracts for Services	202
	Bogus and Sham Contracts	208
	Workers and Dependent Contractors	213
	EU Worker	220
	A Contract Personally to Do Work	221
	Towards a Unified Concept of Employment Status?	225
	Employers' Responsibility in Triangular Relations	229
	Associated Employers	230
	Service Companies	231
	Agency Workers	232
	Platforms	240
	Vulnerable Workers	242
Part III	Statutory Regulation of the Employment	
	Relationship	247
7	Wages	249
	The Wage/Work Bargain	249
	Deductions for Incomplete and Unsatisfactory Work	253
	Withholding Pay at Common Law	254
	Statutory Protection against Deductions	259
	A Duty to Provide Work?	264
	Shortage of Work	264
	Suspension	266
	Garden Leave	266
	Reputation and Employability	267
	The Principle of Mutuality	268
	National Minimum Wage	269
	Scope of Application	272

	Setting the National Minimum Wage	273
	Assessing Whether the Minimum Wage is Paid	275
	Calculating Working Hours	276
	Calculating Total Remuneration Minus Reductions	280
	Enforcement of the National Minimum Wage	282
	Impact of the National Minimum Wage	285
	Fair Wages	287
8	Working Time	289
	Introduction	290
	International Standards	292
	From Conflict	293
	to Co-operation	294
	Working Time Directive	296
	Challenging the Legality of the Directive	297
	Extending the Reach of the Directive	299
	Questions of Scope	300
	'Worker'	301
	'Working Time'	302
	Limits and Entitlements	305
	Limits	305
	Entitlements	308
	Annual Leave	309
	Nature of the Right to Annual Leave	310
	Exercising the Right to Annual Leave	311
	Payment during Annual Leave	313
	What is Pay?	313
	Timing of Payment	315
	The Question of Deferred Pay	316
	Holiday Pay and Sickness Absence	317
	Holiday Pay and Unused Leave	319
	Exclusions	320
	Unmeasured Working Time	322
	'Other Special Cases'	323
	Negotiated Flexibility and the Role of Collective Agreements	326
	The Directive and Collective Agreements	326
	The Regulations and Collective Agreements	328
	Enforcement and Remedies	329
	Individual Remedies	331
	Individual Remedies and Regulation 4	333
	Conclusion	335

9	Equality	337
	Introduction	338
	'Protected Characteristics'	339
	Disability	340
	Race	343
	Religion/Belief	345
	Gender Identity	347
	'Discrimination': An Introduction	348
	Direct Discrimination	349
	Intention, Motivation and Discrimination	350
	'Less Favourable Treatment': Appearance Rules	354
	Discrimination on the Basis of Association or Perception	357
	Indirect Discrimination	358
	Justification	361
	'Multiple Discrimination'	367
	Positive Action	367
	Harassment	371
	Victimisation	373
	Disability	375
	Duty of Reasonable Accommodation	375
	Discrimination Arising from Disability	378
	Prohibited Discrimination	379
	'General Occupational Requirement' and Other Exceptions to the	
	Prohibitions on Discrimination	380
	Equal Pay	387
	Establishing a Claim	393
	Burden of Proof	394
	Remedies	395
10	Work/Life Balance	397
	Statutory Entitlements to Leave and Flexible Working	397
	Right to Paid Leave on Birth of a Child	400
	Statutory Maternity Leave	400
	Rights during Maternity Leave and Pregnancy	401
	Maternity Pay	405
	Return from Maternity Leave	407
	Paid Paternity or Partner Leave at the Time of Birth	409
	Shared Parental Leave and Shared Parental Pay	409
	Unpaid Parental Leave and Emergency Leave	412
	Right to Request 'Flexible Working'	418
	Discrimination against Part-time Workers	421
	A Vision of the Work/Life Balance	429

11	Civil Liberties at Work	431
	Protecting Human Rights at Work	432
	Indirect Effect of the Human Rights Act	432
	The Influence of the European Court of Human Rights	435
	Privacy	438
	Surveillance	440
	Confidential Records	445
	Testing for Drugs and Alcohol	450
	Lifestyle and Sexual Orientation	451
	Freedom of Religion	455
	Dress as a Manifestation of Religion	455
	Hours of Work	457
	Refusal to Perform Duties on Religious Grounds	457
	Freedom of Expression	458
	Speech of Trade Union Organisers	460
	Social Media	461
	Political Activities	463
	Whistleblowing	466
	Qualifying Disclosure	468
	Appropriate Person	470
	Dress Codes	472
Part IV	Collective Labour Rights	475
12	Freedom of Association and the Right to Organise	477
	Introduction	478
	Refusal of Employment	479
	TULRCA 1992, Section 137	479
	TULRCA 1992, Section 152	481
	Blacklisting	483
	Consulting Association	484
	Blacklists Regulations 2010	487
	Discrimination	490
	The Wilson and Palmer Case	491
	The Strasbourg Application	492
	Legislative Responses to Wilson and Palmer	494
	Trade Union Services and Representation	495
	Discriminatory Inducements	497
	Victimisation of Workers' Representatives	500
	Nature of the Activity	501
	Timing of the Activity	503

	Victimisation and the Problem of Remedies	505
	The Lynch and Thomas Cases	506
	Lessons of the Lynch and Thomas Cases	508
	Trade Union Security and the Right Not to Join	510
	The Closed Shop and Organisational Security	511
	International Law and the Closed Shop	513
	Organisational Security and Legal Restriction	515
	Statutory Framework	515
	'100 per cent Campaigns' and 'Fair Shares' Agreements	517
	Conclusion	520
13	Freedom of Association and Trade Union Autonomy	522
	Introduction	522
	Trade Union Definition, Listing and Status	525
	Trade Union Objects	527
	Objects Clauses	529
	Political Objects	531
	Trade Union Government	534
	Rule-book Constraints	535
	Constitutional Conflict	537
	Trade Union Elections	539
	Statutory Procedures	540
	Rule-book Obligations	542
	Trade Union Members' Rights	545
	Right to Information	545
	Right Not to Strike	547
	Trade Union Exclusion and Expulsion	551
	Cheall and its Progeny	552
	ASLEF and its Progeny	555
	Trade Union Disciplinary Procedures and Decisions	557
	Disciplinary Procedures	558
	Disciplinary Decisions	564
	Certification Officer	565
	Conclusion	569
14	The Right to Bargain Collectively	571
	Introduction	572
	Collective Bargaining and International Standards	573
	International Labour Organization	573
	Council of Europe	576
	Collective Bargaining Practice	579
	Bargaining Decentralisation	580
	Legacy of Voluntarism	582

	The Statutory Recognition Procedure	587
	Applications and Admissibility	588
	Bargaining Unit	592
	Establishing Majority Support	595
	Forcing a Ballot	595
	Conduct of the Ballot	597
	The Problem of Employer Resistance	600
	News International	601
	Cable & Wireless plc	604
	Declaration of Recognition	607
	Collective Bargaining Method	608
	Enterprise Change and Derecognition	610
	Rights of Recognised Trade Unions: Facilities for Collective Bargaining	614
	Legal Framework	615
	Trade Union Facilities under Attack	618
	Rights of Recognised Trade Unions:	
	Information for Collective Bargaining	622
	Statutory Obligation	623
	Law in Practice	626
	Conclusion	629
15	The Right to be Informed and Consulted	633
	Introduction	634
	Consultation Rights and European Law	635
	From Specific Duties	636
	Resisting Employer Avoidance	638
	to General Obligations	641
	Limited Impact	643
	European Works Councils	646
	The 'Recast Directive'	648
	Redundancy Consultation	651
	Collective Redundancy	652
	'Proposing' to Dismiss	655
	Employee Representatives	658
	Process of Consultation	660
	Special Circumstances	663
	Enforcement of Duty to Consult	665
	Information and Consultation Procedures	669
	Questions of Scope	670
	Pre-existing Agreements	672
	Establishing a Procedure	675
	Enforcing the Employer's Obligation	678

	Protection of Employee Representatives	680
	Implementing the Directive	682
	European Works Councils	684
	Questions of Scope	685
	Special Negotiating Body	688
	Negotiating an Agreement	690
	Subsidiary Requirements	694
	Rights and Duties of Workers' Representatives	696
	Enforcement	698
	Conclusion	702
16	Collective Action and the Right to Strike	705
	Introduction	706
	Right to Strike and International Standards	707
	The International Labour Organization	708
	Council of Europe	710
	Common-law Liability and Statutory Protection	712
	Common-law Liability	713
	Statutory Protection	716
	Narrow Scope of Protected Action	720
	'Trade' Disputes, not 'Political' Disputes	721
	Narrow Scope of 'Trade' Disputes	723
	Before the Ballot	725
	Notice of Intention to Ballot	726
	Duty to Provide Explanation to Employer	728
	The Ballot	730
	The Statutory Duty	731
	Conduct of the Ballot	733
	After the Ballot	736
	Notice of Ballot Result	737
	Notice of Industrial Action	739
	Prohibitions and Restrictions	743
	Picketing	743
	Secondary Action	746
	The Human Rights Act 1998	749
	Stalling in the Court of Appeal	750
	Into First Gear on Convention Rights	752
	Conclusion	755
17	Liability for Collective Action	758
	Introduction	759
	Labour Injunctions	760
	Interim Injunctions	761
	Evolution of the Law	763

	Labour Injunctions in Practice	765
	The Employer's Interest	766
	The Public Interest	768
	Trade Union Liability	772
	Injunctions against Trade Unions	772
	Enforcing the Injunction	774
	Discipline and Dismissal	779
	Action Short of Dismissal	780
	Dismissal and Replacement	782
	Protected Industrial Action	785
	Statutory Protection	786
	Limits of Statutory Protection	788
	Unprotected and Unofficial Industrial Action	791
	Unprotected Action	791
	Unofficial Action	793
	The 'Public Interest'	796
	Prohibited Industrial Action	797
	Alternatives to Litigation	803
	Conciliation	803
	Arbitration and Other Powers	805
	Conclusion	808
Part V	Termination of Employment	811
18	Wrongful Dismissal	813
	The Right to Protection against Unjustified Dismissal	813
	Common Law and Statute	818
	Breach of the Duty to Give Notice	824
	Implied Term of Reasonable Notice	824
	Statutory Minimum Notice Period	825
	Wrongful Dismissal without Notice	826
	Justified Summary Dismissal	830
	Implied Term of Mutual Trust and Confidence	833
	Johnson Exclusion Zone	834
	Economic Loss	836
	Psychiatric Illness	838
	Disciplinary Procedure	841
	Right to Representation	842
	Contractual Disciplinary Procedure	844
	Terms Restricting Grounds of Dismissal	849
	Injunctions	851
	Reform	855

19	Unfair Dismissal	856
	Qualifying Conditions	857
	Contract of Employment	857
	Qualifying Period of Continuous Service	858
	Three-month Limitation Period	861
	Effective Date of Termination	861
	Statutory Concept of Dismissal	863
	Dismissal or Resignation?	864
	Constructive Dismissal	866
	Frustration	869
	Agreed Termination and Settlements	871
	The Test of Fairness	873
	Principal Reason for Dismissal	874
	Substantial Reason	875
	Automatically Unfair Dismissal	876
	The Range of Reasonable Responses Test	878
	Procedural Fairness	889
	Remedies for Unfair Dismissal	893
	Compliance and Corrective Justice	893
	Reinstatement	895
	Compensation	899
	Upper Limit on Compensation	910
	Effectiveness	911
20	Economic Dismissal	913
	Competing Policies	914
	Dismissal for Redundancy	918
	Redundancy and Unfair Dismissal	918
	Aim of Redundancy Payments	919
	Qualifying Conditions for Redundancy Payments	920
	Statutory Concept of Redundancy	922
	Reorganisation Involving New Job Specifications	925
	Flexibility Clauses	929
	Place of Work and Mobility Clauses	930
	Claims for Unfair Dismissal	933
	Some Other Substantial Reason for Dismissal	933
	Fairness of Selection for Redundancy	932
	Redeployment	935
	Offer of Alternative Employment	935
	Failure to Consider Redeployment	937
	Insolvency	938
	Protection of Wages	939
	Corporate Rescue	94

-		
Cor	ומלו	ntc
CUI	ILC	IILO

'n.	ø	W.	r	n
я	ľ	3	U	ı

Transfers of Undertakings	944
Acquired Rights Directive	944
Dismissals before the Sale or Transfer	946
Dismissals after the Transfer	951
Variation of Terms by Transferee	951
Outsourcing	954
Controlling Capital	958
Index	962
IIICCA	702