Types of Employment.

Monthly contracts of employment.

- Referred as
 "permanent
 employment" by
 employers and unions.
- The contract of a permanent employee is automatically renewed at the end of every month until he or she reaches the age of retirement.
- Permanent employees have job security (can't terminate without a valid reason) and social security.
- Compensation for termination.
- Compensation for accidents
- EPF/ETF/Gratuity

Fixed term contracts.

- Employed for a fixed term.
- No guarantee for the renewal of the contract.
- In a fixed term contract, the contract will come to an end automatically at the end of the fixed term period. It means there is no termination of services by his employer.
- Therefore workman who has been employment under the fixed term contract cannot file an application in a labor tribunal for relief against termination of his services. (IDA SEC 31, 1.a)

Probationers.

- Probationary period is a trial period for the workman who has been recruited as a new workman with the workplace.
- During the probation period the employer will assess; aptitudes, attitudes, abilities, characteristics, interests etc. of the workman.
- A probationer stands on no different footing to other employees who are on monthly contracts of employment; the only difference is being the period of probation.
- At the end of the probation period the employer has options,
 - Confirmation of service (If the employer is satisfied)
 - 2. If the employer is not satisfied termination of services.
 - 3. If the employer is not satisfied extension of probationary period.
- At the end of the probationary period there is no automatic confirmation in services, until the probationary gesture letter of confirmation, he will be treated as probationer.
- A probationer can go to a labor tribunal and file an application for termination of his services if the probationer could establish MALAFIDES TERMINATION OR VICTIMIZATION.

Types of Employment

Casual Employment.

- The casual employee has no permanent place or office and he is employed in a daily basis for some special work and does not fall into the regular work.
- There is no clear cut test to determine whether an employee is a casual employee or not.
- The following should be considered to decide whether the person is a permanent workman or casual workman.
- I. Nature of the employment.
- II. Period of employment
- III. Regular or irregular employment
- IV. Mode of payment.

Temporary Employment.

- employee is employed for regular or a normal job which is a part and parcel of the employer's business but for SHORT PERIOD to fill a gap temporarily.
- Employment is determined by two factors.
- I. Nature of employment
- II. Period of service
 - Employee's status must be clearly stated on the contract.
 - employee is like a regular employee on an expressed contract and his period of employment limited by time or by job.

Seasonal Contracts of Employment.

- Employer engages employee during a particular season.(ex- Tourist season)
- Employees do not have an automatic right to reemployment.

Apprentice and Training.

- An apprentice cannot be considered as a workman or an employee. Thus there is no contract of service between an employer and employee.
- An apprentice serves his master; learn from the trade, without the intention to earn money.
- The legal framework is recognized in three forms.
- Decisions of wages board, employed under employment of trainees (private sectors) Law No 08 of 1978, Apprentices under National Apprenticeship Act NO 49 of 1971.
- They are covered by WCO, FO and EPFA not by SOEA, IDA, WBO, TUO or TEWA.

PRELIMINARY YEAR | INDUSTRIAL LAW

Jamis Appuhamy vs. Shanmugam. [1978] 80 NLR 298.

Sharvananda J, "Servant is bound to obey to any lawful orders of the master"

Yewens vs. Noakes.

Bramwell J, "A servant is a person who is subject to the command of his master as to the manner in which he shall do his work."

Y.G de Silva vs. Associated News Papers of Ceylon Ltd.

When the employee exercises greater professional skills or performs work of a highly technical or scientific nature, it limits the right to control.

CONTROL TEST

- Control test looks into "right to control" rather than actual control.
- Technological advances, specialization and professionalism limit the application of this test.
- The employee cannot delegate his work to another or work in any other place.
- This test cannot test expert workers. Exsurgeons.
- 'Superintendence' or 'failure of control' may not always be decisive or conclusive to determine the relationship.

Tests to identify a contract of service.

Integration Test

To check whether the person is a part and parcel / integrated to the business.

Economic Reality Test

This test deals with the **economic practices** of the individual. If the individual has ultimate responsibility for the profit or loss of the contract, then this test would indicate a self-employed situation. On the other hand, where these financial risk or opportunity to profit or possibility of loss and responsibility for costs do not exist, there is an inference of employment.

U.S vs. Silk (1946) 331 U.S 704.

In this case workmen in a coal mine used their own tools and claimed compensation; HELD –contract for service.

"Whether the worker is in business on his own account (as an entrepreneur) or works for another who takes the ultimate risk of loss or chance of profit"

Montreal vs. Montreal Locomotive Works.

Lord Wright; "In many cases the question can be only be settled by examining the whole various elements which constitute the relationship between parties."

Stevenson, Jordan and Harrison vs. MacDonald and Evans.

Denning LJ, "Under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business; whereas under a contract for service his work, although done for the business, is not integrated into it but is only accessory to it"

Y.G de Silva vs. Associated News Papers of Ceylon Ltd.

In this case both parties were doing the same business and Silva was a part and parcel of the newspaper business.

Multiple Test.

This test considers many factors relevant to the case and decides whether the person is an independent contractor or a workman. Some factors are as follows;

- Uniform
- Delegation of work
- Chance of profit/ risk for loss
- Ownership of tools.

This approach ensures that, the objective of labor legislations are safeguarded, and vulnerable employees are not exploited.