

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

B.Sc.

ES2030: Law I

COURSE CODE : **ENVS2030**

UNIT VALUE : **0.50**

DATE : **16-MAY-03**

TIME : **10.00**

TIME ALLOWED : **3 Hours 15 Minutes**

ENVS2030 – LAW I

ANSWER FOUR QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

QUESTION 1

Read the law report cited below and answer the questions that appear at the end of the report.

**Queens Bench Division
January 2003.**

Adam's Furniture v Construction Industry Training Board.

Before Mr Justice Uffey.

Did the fitting of kitchen furniture amount to an alteration to part of the building so as to render the appellant liable to pay levies to the Construction Industry Training Board?

Mr Justice Uffey held in favour of the Construction Industry Training Board dismissing an appeal by Adam's Furniture of Stafford, from the decision of the Employment Appeal Tribunal brought under section 11 of the Tribunals and Enquires Act 1992 from a decision of the Construction Industry Training Board made in February 1999 that the business of kitchen furniture installation rendered Adam's Furniture liable to assessment for the payment of levies under the Industrial Training Levy Regulations 1998.

Under the 1998 Regulations the board had power to impose a levy on a "construction establishment" which was defined as engaged wholly or mainly in the construction industry.

A definition of engaged wholly or mainly in the construction industry was settled from a list of activities found in Schedule 1 of the Industrial Training (Construction Board) Regulations 1992. The purpose of the levy in the Regulations was to provide funds for the training of employees in the construction industry.

Mr David Peters for the appellant; Mrs Clare Davis QC and Mr Thomas Roberts for the board.

Mr Justice Uffey said that the board found the appellants activities to fall under Schedule 1 of the Regulations in that the fitting of kitchen furniture involved the alteration of part of the building. The manufacture of built-in storage units, being articles wholly or mainly of wood under paragraph 1©(1); activities comprising wholly or mainly activities in joinery.

The appellant argued that as kitchen furniture was fixed by screws to the existing building it was free standing so as not to alter the fabric of the building. Such an installation was not an alteration to the building.

The board was correct in its submission that whether the fixing or fitting of furniture or units altered part of a building depended upon the extent to which that part was altered, which was in turn determined by the degree of permanence flowing from the change. See in particular the words of Lord Roth in Parker v Construction Industry Training Board, House of Lords (1994).

Whether a fixing or fitting altered the fabric and appearance of a wall and was done in such a way; as to have a character of permanence so as it become part of the wall, it amounted to an alteration of the wall.

The appellant manufactured and installed kitchen and bedroom furniture so as to fall within the Schedule to the Regulations. It was the degree and extent of coverage of part of building, which translated a mere fixing into a fitting. Such a fitting if mainly of wood was an activity of construction. The judgement of Lord Justice Steppes in *Merit and Merit Partners v Construction Industry Training Board*, Court of Appeal (1995) supported this view.

In order for joinery to fall within the Schedule it had to be of a character other than furniture or furniture which was fixed and have the character of being fitted in the sense of being built in so as to become part of the building.

The requirements of the Regulations were satisfied and for all the reasons stated above the appeal would be dismissed. The appellants were liable as a construction business to pay Construction Industry Training Board levies.

Solicitors Rose and Hind; Brines and Brines.

1a. Explain if the case can be classified as civil or criminal and the factors that lead you to your conclusion.

(6 marks)

1b. Identify the sources of law used by Mr Justice Uffey to reach his decision. If the sources had been in conflict what order of priority and importance should the judge apply to each source?

(6 marks)

1c. What is the role of the three different types of lawyers cited in the report?

(6 marks)

1d. Identify the issue before the court and the decision reached. Is the decision sensible in terms of the sources cited and the practical effect of the judgement?

(7 marks)

(Total 25 marks)

QUESTION 2

Graham recently bought a small detached house and prior to moving in decided to have an extension built. He discussed his requirements for the extension with David, a local builder on 3 May in his local pub. David told Graham that he would do the work for £20,000, to which Graham replied that he would think about it, because he wanted to get a few quotes first. The next day David, anxious to get the job, telephoned Graham and said that he would do the work for £19,000, but made it clear also that Graham must make up his mind by the 19 May, because he wanted a decision by then. Graham told David that he would let him know.

Graham wrote to several building firms including Coles Ltd asking for quotations for the work. Before Graham received any replies, a friend of his in the building trade told him that none of the firms would be likely to do the job for under £25,000. Therefore, on 12 May Graham posted a letter to David saying, "Your price of £19,000 is okay. When can you start?"

On 13 May Graham received a letter from Coles Ltd saying that they would do the job for £18,000. Graham immediately telephoned Coles Ltd and accepted their offer. He then telephoned David and told him to ignore the letter, which he has just sent to him, as he no longer wished David to do the work.

David received Graham's letter on the 14 May.

Explain whether or not Graham has a contract with David.

(25 marks)

QUESTION 3

The Health and Safety at Work Act 1974 imposes various obligations affecting all workplaces. The Act is sometimes referred to as a piece of "dynamic legislation" because it enables the government to develop Statutory Instruments and Regulations as the need arises. Describe some of the more important regulations more recently developed for the construction industry in relation to the design, the construction operations and in the use of the building and explain what these regulations seek to ensure.

(25 marks)

QUESTION 4

There are no moral connotations in the term "unfair dismissal"; it has a strict statutory meaning and a qualified employee is entitled to statutory remedies if he/she has, according to the statutory rules, been dismissed, and that dismissal was unfair. Discuss.

(25 marks)

QUESTION 5

You are a construction management student currently undertaking a summer work placement period with a legal practice specialising in construction law. Your supervising solicitor has asked you to write a report on the following problems/issues that he is having in the application of the law of contract to issues arising in the construction industry.

- a) Where a supplier of construction materials does so on standard forms of conditions of sale and a contractor purchases those materials on that company's standard conditions of purchase, which conditions will apply if a dispute should arise?

(7 marks)

- b) A contractor has submitted a design and build tender in competition for the construction of a new swimming pool. At a meeting between the client and the contractor, the contractor is advised that his scheme design and tender price has been successful and that he will be awarded the contract. However, the client makes it clear that the award is subject to a successful bid for funding. Discussion with the funding authority are such that both parties expect the funds to be forthcoming as a matter of course and that the contract to build the swimming pool will go ahead. In the meantime the client asks the contractor to undertake a certain amount of design changes in advance of being awarded the contract. The contractor carried out this redesign work but no contract was signed because the funding never materialised.

(11 marks)

- c) A contractor has completed the construction of a factory building on time apart from the installation of the main roller shutter doors. The contractor allowed the employer access to the factory in order to install factory equipment, and by the time that the employer had fitted the equipment; the contractor had installed the doors, so that the employer could start to use the factory for business at the time that the employer intended to use it. However, the architect issued a non-completion certificate and the employer wrote to the contractor stating that he intends to deduct Liquidated Damages. The contractor argues that the employer has suffered no loss or delay because he was able to commence the use of the factory for business purposes at the time that he intended to.

(7 marks)

QUESTION 6

Lord Wright in his judgement in *Wilson & Clyde Coal & Co Ltd v English* [1937] 3 All ER 628 saw the employer's common law duty as comprising three separate duties in the requirement for the employer to take reasonable care of its employees' safety at work. Explain and discuss these common law duties.

(25 marks)

END OF PAPER

