

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

B.Sc.

ES2030: Law I

COURSE CODE : ENVS2030

UNIT VALUE : 0.50

DATE : 04–MAY–04

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

ENVS 2030 LAW I

Answer FOUR questions

All questions carry equal marks

QUESTION 1

Read the law report below and answer the questions that follow the report.

**McDonald v South East Hospital Trust.
Judgement May 31, 2003
Before Lord Justices Jenkins, Mare and Lady Justice Orr.**

The duty of care owed by an employer to an employee to take such reasonable care as to avoid unreasonable exposure to unnecessary risk of injury extended to physical and psychiatric damage. But there was no duty to protect the employee from unpleasant emotions which did not involve any form of injury at all.

The Court Appeal so held absolving the South East Hospital Trust of a claim for damages brought by Mr Alan McDonald for psychiatric illness suffered by him alleged to have been caused by the defendant's actions during his employment with the Trust.

Mr James Braddock QC, Mrs Lesley Morris for the plaintiff; Mrs Tina Long QC, Mr Thomas Diamond for the defendant.

Lord Justice Jenkins reviewed the law covering the relationship of employer and employee. The Employers Liability Act 1927 had first extended contractual responsibilities to physical injury caused by negligence and the later Acts – The Workers Compensation Act 1952, and Injuries at Work Act 1972 had developed these duties.

Robertson v Forth Road Bridge Board. House of Lords (1979) has acknowledged duties could extend to psychiatric injury. Further consideration was given to the scope of the duty in Gillespie v Commonwealth of Australia. New South Wales High Court (1991), and Walker v Northumberland County Council. Court of Appeal (1995).

All these cases had dealt with whether the law permitted recovery for psychiatric injury to persons as a result of seeing, hearing or learning about the death of or injury to others.

In *Frost v Chief Constable of South Yorkshire Police*. High Court (1999) the court distinguished the position of primary and secondary victims but restricted its comments to psychiatric injury.

The present case invited the court to take a further step in the extensions of the duties owed by employers to employees. Should an employer have a duty to prevent an employee from unpleasant emotions such as grief, anger, resentment or normal human conditions such as anxiety or stress?

The answer had to be no. Where no injury had occurred outside of the emotional upset an employer could not be expected to organise the employment environment so as to ensure harmony and happiness for all.

Nothing in the conduct of the South East Hospital Trust's working practices had, or ought to have been perceived by the Trust, as a cause of psychiatric illness. The case for the plaintiff must fail.

Thompson, Black and Dunn for the plaintiff. Eriksson, Philpot and Simmons for the defendants.

- a. Carry out a classification of law analysis by explaining what type of case is being considered by the court and what factors assisted you in reaching your decision. (5 marks)
 - b. Identify three types of lawyers involved in this case and explain the different functions of each. (6 marks)
 - c. Extract all the sources of law used by the court in reaching their decision. Explain how the source came into existence and what order of importance should be attached to each if the sources were in conflict. (6 marks)
 - d. What is the decision of the court in this case? To what extent do you think the decision is sensible in both legal and practice terms. (8 marks)
- (25 marks)

QUESTION 2

The Construction (Design and Management) Regulations 1994 (CDM Regulations) impose substantial duties on all participants in the construction process to take health and safety into account in the way in which they carry out the work. However, in the Heathrow Express tunnel collapse case, the contractor was found to have put construction time, costs and profitability before health and safety issues.

Explain how by the correct application of the CDM Regulations, health and safety issues can be incorporated in the other key areas of construction business performance.

(25 marks)

QUESTION 3

- a. A valid contract gives the parties rights and duties, which are enforceable in the courts. Describe the main elements necessary for a valid binding contract.
(8 marks)
- b. Letters of intent are commonly used to enable work to start on site before contract details have been finalised. They are routinely issued to contractors on behalf of clients, usually on the assumption that they provide some measure of protection to the client while at the same time allowing the contractor to start on site even though no contract has been executed.
Discuss.
(10 marks)
- c. The recent case of Ben Barratt & Son (Brickwork) Ltd v Henry Boot Management Ltd [1995] CIL 1026 was concerned about the contractual status of a letter of intent. Explain the outcome of this case for contractors and sub-contractors.
(7 marks)

(25 marks)

QUESTION 4

- a. Problems can occur about what the parties have agreed and whether those points have become contract terms. In the light of this statement, explain “express contract terms” and “implied contract terms” and illustrate this explanation with case law. (10 marks)
- b. Negotiations were carried out by Builders Ltd with a company for the supply of stationery materials. Previously the company had already supplied goods on an ad-hoc basis, but Builders Ltd wanted to regularise this relationship. A document was drawn up, containing all the terms to which the supply company agreed and was then subsequently sent to them by Builders Ltd to be signed. The supply company made some minor amendments to the payment dates, marked the document “approved” and returned it to Builders Ltd. Builders Ltd filed the returned document when it was received and payments were subsequently made regarding the supply of stationery materials in accordance with the document. However, problems have now arisen regarding the timing of the deliveries and the quality of those stationery materials supplied. In response to complaints to the supply company by Builders Ltd, the supply company maintains that there is no contract between them and Builders Ltd.
Advise Builders Ltd. (15 marks)

(25 marks)

QUESTION 5

- a. Those that provide good and services, in the absence of anything to the contrary contained in the Building Contract are, both at common law and under the Sale and Supply of Goods Act 1974, the supply of Goods and Services Act 1982 both as amended by the Sale of Goods (Amendment) Act 1995, impliedly warranting that the goods supplied would be of “satisfactory quality” and in certain circumstances would also be “fit for their purpose”. Discuss. (12 marks)
- b. A building contract involves a considerable quantity of faced brickwork. The facing bricks were ordered by the Builder and supplied by a Builders Merchant to an approved sample panel of brickwork constructed on the site. The sample panel was built by the Builder with the facing bricks supplied by the Builders Merchant. On inspection, the Contracts Administrator is refusing to accept a portion of the constructed faced brickwork because the bricks are supposedly not to the approved sample.
Explain the Builders position in these circumstances. (13 marks)

(25 marks)

QUESTION 6

- a. Describe details of the statutory written particulars of employment that must be given to all employees in writing, no later than two months from the employee's start of employment. (10 marks)
- b. "The issue of fairness is obviously fundamental to a claim of unfair dismissal." Andrew C. Bell, "A farewell to Polkey?" Student Law Review 2002, Vol 17, P24/25.
Discuss. (15 marks)

(25 marks)

END OF PAPER