

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

LL.B.

LL.B. Part II: Discrimination Law - half option

COURSE CODE : LAWSII36

DATE : 16-MAY-03

TIME : 10.00

TIME ALLOWED : 2 Hours 15 Minutes

DISCRIMINATION LAW

Answer **THREE** questions

- 1) Henrietta High School is a private boarding school that is proud of its long tradition of admitting only girls. The school board wishes to employ a professional fund-raiser for the school. The advert for the post that is placed in the local newspaper states that a) "only past pupils need apply" and that b) "preference may be given to candidates who have been resident for forty or more years in the locality, to ensure familiarity with the local people and with the long tradition of the school". Three candidates apply.

Adam, a male-to-female transsexual, is immediately rejected, on the grounds that he did not attend the school.

Geraldine, a sixty-year old past pupil who is a lesbian and a well-known local campaigner for equal rights for homosexual couples, is also rejected, on the grounds that her campaign work does not suit the image that the school is attempting to project.

Rushanara, a thirty-year old past pupil who is Muslim and from a Bangladeshi family background, is called to interview. One of the three interviewers is Mrs. Smith, a teacher who Rushanara remembers expressing strong anti-Muslim opinions in class and who used to suggest that Britain would be better if all non-Christians would "just go home". Rushanara is not offered the job and is also not given a reason for the rejection.

Two weeks later, the post is re-advertised. Rushanara makes a complaint of racial bias to the school board, and the headmistress, Mrs. Tomkins, who also was a member of the interview panel, tells her with passionate indignation that Henrietta High School would never discriminate against an applicant in a manner contrary to discrimination law.

Advise all three disappointed applicants.

TURN OVER

- 2) Anita is employed by TransMega Global Corporation Ltd. as a financial adviser. In May 2002, she applies for a temporary transfer to the post of finance manager in her department, which has been advertised internally and which will be vacant for a six-month period starting at the beginning of August 2002. The post of finance manager has a very high status within the company, and while the post is only temporarily vacant until the current holder of the post returns from extended sick leave, Anita hopes to raise her profile by performing well in the job. She is short-listed, and interviewed by an all-male panel of three for the post. They ask her among other things about how she balances work and family life. Anita replies that she has no family or partner as yet, but that she is very much looking forward to raising a family.

While waiting for the panel to announce their decision, Anita discovers that she is pregnant and gives notice to her employer that she will be commencing pregnancy leave at the beginning of January 2003. In June 2002 she learns that she did not get the job, and is told that the main reason why she was not selected was that the panel was not satisfied that she displayed the 'necessary commitment'. The job is given to another woman, Betty, who also works as a finance adviser. Anita is very angry, but on account of some health problems that she has relating to the pregnancy, she does not submit a claim for sex discrimination against TransMega until October 2002. Before the claim comes before an employment tribunal, Anita goes on pregnancy leave and in April 2003 asks TransMega if she can return to work on a part-time basis. TransMega inform her that the corporation does not permit return to work on a part-time basis and that, in any case, her "attitude" is a problem. Anita submits a second claim for victimisation.

Advise Anita.

- 3) Anna and Bashar begin work in a computer company on the same day. When Anna arrives at her desk, she is shocked to discover that the office has several calendars hanging up that all feature naked women. At lunch in the company's canteen, she overhears several employees commenting upon her looks in a manner that she considers offensive. Colin, a senior manager, notices her reaction and comes over to apologise on behalf of the company once the employees in question have left the canteen. He suggests that Anna and Bashar should accompany him that evening after work to a local pub where he will be entertaining several clients. Both accept the invitation.

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When Anna and Bashar join the group in the pub that night, Colin and the clients are already quite drunk. One of the clients, Danny, begins to tell a series of sexist and racist jokes. Anna asks him to stop, and Colin pulls her aside and tells her to “ease up and flirt a little, like you’re supposed to do to make sure that we don’t lose their money”. Bashar tells him not to be so sexist, and Colin responds by telling Bashar that he’s “not in Mecca now” and that Bashar should “ease up or get out, because the company doesn’t like immigrants stealing English jobs”. Bashar is British.

Both Anna and Bashar are very upset. Advise both.

- 4) “The Disability Discrimination Act [DDA] is designed to achieve substantive equality, rather than the rectification of comparative disadvantage, and largely succeeds within its limited scope of application in avoiding the difficulties associated with the comparative disadvantage approach.”

Discuss.

- 5) “The individual enforcement model of discrimination law can deliver only limited results: the imposition of enforceable employment equity schemes and positive equality duties on both public and private sector bodies is necessary to generate real change.”

Discuss.

- 6) “The concept of indirect discrimination has overcome tentative and artificial restrictions upon its scope of application to become a powerful tool in expanding the reach and impact of anti-discrimination law.”

Discuss.

END OF PAPER