

## ILEX and Discrimination Law

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Take these notes to the Lecture together with your read and précis notes of Part C of the ILEX 'Employment Issues' booklet.

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## Lecture rules ...

- Raise your hand if you have a Q.
- Turn your mobile OFF.
- Annotate these notes.

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## Different types of discrimination

- Sex Discrimination Act 1975
- Equal Pay Act 1970
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Religion - Employment Equality (Religion or Belief) Regulations 2003.
- Sexual Orientation (ECHR based?).

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## Note ...

In nearly ALL areas of discrimination law it is not necessary to be employed to bring a claim.

- For example, if I am refused employment because I am a man that is sex discrimination and I am entitled to bring a claim for compensation.

Can you think of an area where that may not apply?

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## Basic principles ...

Both sex and race discrimination follow similar core principles.

- For example, there are both *direct* and *indirect* forms of discrimination applicable.
- You CANNOT justify direct discrimination in law (this does not apply to disability where you can justify it).
- You can - *in certain circumstances* - objectively justify indirect discrimination.
- There are often *exceptions* to the laws.

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## Direct and indirect discrimination

If I refuse a woman a job because she is a woman that is direct discrimination.

- What if I want someone to drive my bread van (which you can drive on a normal licence) and I advertise for an HGV driver (where 98% of drivers are men) and thereby exclude Mary from applying. Is that discrimination? What form of discrimination?

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### James v Eastleigh B C [1988]

- Read this case and note the '*but for test*' - produce examples of sex and race scenarios where that test can be applied:
- *But for* the fact she is pregnant.
- *But for* the fact s/he is Scottish.
- *But for* the fact s/he is a Muslim etc.

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### Indirect Discrimination

- 'Selwyn's Law of Employment' says "*Male or female clerk must have a large beard*" is an example of indirect discrimination (Dr J does not agree and argues this can be shorthand for direct discrimination).
- Indirect discrimination occurs "*if a requirement or condition cannot be objectively justified as necessary*" (Bilka-Kaufus - also Webb v EMO Air Cargo).

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### Victimisation ...

- This occurs when/if an employer treats an employee less favourably because s/he has brought a claim of equal pay, sex or race discrimination.

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### Note: the cases on sexual orientation and pregnancy

- What is sexual orientation?
- Do you agree that a pregnant nun should be dismissed?
- Do you agree that dismissing a woman because she is pregnant amounts to direct discrimination?
- List some of the *exclusions* from the SDA 1975

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### Equal Pay Act 1970

- Would an average man be happy if his pay was the same as an average woman's?
- Can an employer ever *justify* paying men more than women if they are doing like work, work rated as equivalent or of equal value?
- How do you determine like work etc?

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### Race Discrimination Act 1976

- Can you define what amounts to race discrimination?
- Can you give an example of direct race discrimination?
- Can you give an example of indirect race discrimination?
- Provide a list of exceptions ...

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### Disability Discrimination Act 1995

List the requirements to make reasonable adjustments and then read & précis the following cases:

- Oneill v Symm & Co [1998] - Fozard v GMPA [1997] - Tarling v Wisdom Toothbrushes [1997] - Samuels [1997].
- Provide/think up an example of where it can be reasonable to dismiss a disabled person.

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### **Task 1 and 2.**

- Working with the student next to you draft bullet point answers to Tasks 1 and 2.
- Be prepared to deliver your answer to the whole of the class.

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