

SUMMER EXAMINATIONS 1999/2000

LL.B. - ALL YEARS
OCCASIONAL STUDENTS

LABOUR LAW (LW320)

Mr. G. Whyte
Ms. L.A. Buckley

Time Allowed: **THREE** Hours.

Answer **FOUR** Questions. **TWO** from Section A and **TWO** from Section B.

Erasmus Students Answer **THREE** Questions, answering at least **one** question from Section A and **one** from Section B.

All questions carry equal marks. Where a question contains more than one part, all parts carry equal marks, unless otherwise stated.

SECTION A
ANSWER TWO QUESTIONS

1. 'The rules for deciding whether an individual is an employee or an independent contractor are complex and unclear. Given the importance of the distinction, and the failure of the judiciary to resolve the matter, there is an urgent need for legislative reform'.
Do you agree? Discuss critically, supporting your arguments by reference to appropriate authority.
2. 'The complexities of current sexual harassment law are unlikely to be resolved even by the specific legislative provisions introduced in the Employment Equality Act 1998. This is especially the case, given the effect of judicial attitudes to employees bringing harassment claims'.
Do you agree? Discuss critically, illustrating your answer by reference to relevant case-law and authority.
3. Sally, who is disabled and uses a wheelchair, is a fully qualified accountant, having passed her final exams two years ago. Since then, however, she has been unable to obtain a paying position in any accountancy firm. She assumes that this is because of her disability, although no employer has ever said this. Usually, Sally is told that the position is filled by a 'more suitable' candidate. She has some work experience, as she has been helping on a voluntary basis in a charity organisation. She recently applied for a job in a Galway firm, and felt she did well at the interview, although her prospective employer, Tim, did ask some questions about any special needs she might have. Sally made it clear that her main need was a lift to her office, but as there was one in place, this did not seem to pose any problems. She would also need a specially modified desk, but these are readily available and not particularly expensive. Tim also seemed concerned that she might be prone to bouts of sickness, leading to absence from work, even though Sally offered to have a medical to reassure him that this was highly unlikely. Two days later, Sally received a letter from Tim informing her that she was unsuccessful in her application, as the position had been filled by a more qualified candidate. This occurred last week. Sally has now seen another advertisement of the same job in the local paper. Advise Sally.
4. Answer (a) or (b):
 - a) Critically analyse the concept of justification as it applies to gender-based pay discrimination.

Or:

- b) Lydia and Ben work for Genesis Ltd, a soft drinks manufacturing company. Lydia, a chemist, developed a new kind of soft drink called Raging Bull, using secret ingredients. The drink became very popular with college students, and was one of Genesis Ltd's most popular products. Ben, the production manager of Genesis Ltd, recently suggested to Lydia that they should set up a company to manufacture and sell Raging Bull themselves. Ben was familiar with all of Genesis Ltd's manufacturing techniques, and was confident that their joint skills could make a success of the venture. He also approached Alison, the marketing manager's secretary, and persuaded her to join the new company. Alison secretly photocopied all of Genesis Ltd's sales figures and customer lists, and Ben used these to contact Genesis Ltd's main clients, to try to persuade them to give some business to the new company. Ben's contract includes a clause that if he leaves his job at Genesis Ltd, he will not enter into competition with them or use or reveal his insider knowledge of their business. Genesis Ltd recently discovered the plan to set up a rival company and immediately dismissed Lydia, Ben and Alison. These are now threatening to sue Genesis in relation to their dismissal, while proceeding with their rival company. Advise Genesis Ltd.

SECTION B
ANSWER TWO QUESTIONS

5. Sarah was employed as a nurse at St. Jude's Hospital, Galway. The hospital was founded by a religious order, the Sisters of Hope, but most of the staff are now secular. Sarah believes that she has 'psychic abilities', and works after hours as a faith healer. A local paper recently published her photograph, under the heading 'Psychic Sarah Heals the Sick'. The picture was accompanied by an article, in which Sarah was quoted as describing her work at the hospital as 'pointless', given that medicine was really of no value to patients, as all that was required was 'psychic energy'. The article caused a considerable stir at the hospital, and Sarah's immediate superior, Nora, called her in for a 'chat'. Nora pointed out that such statements from one of the hospital's staff might cause considerable distress to patients; furthermore, it was not appropriate for a member of the medical profession to 'dabble in dubious arts', especially given that the hospital was a religious foundation. She asked Sarah to give up her activities. Sarah refused, as she is a sincere believer in her mission to save people from pain and suffering, and does not believe in organised religion. However, she agreed not to give any more embarrassing interviews. The next week, Sarah attended a 'health fair' at a local hotel. The fair received a write-up in the local paper, which referred to Sarah. The next day, Sarah received a letter from the hospital terminating her employment. Advise Sarah.
6. Outline and critically discuss the principal provisions of the Transfer of Undertakings Regulations, 1980. In your opinion, is it true to say that the legal principles applicable in this area elevate the interests of employees above the reasonable needs of business efficiency? Support your answer by reference to appropriate legal authority.
7. Answer (a) or (b):
- a) Describe and critically analyse the protection given to parents in Irish law, supporting your answer by reference to appropriate legal authority.

Or:

- b) 'The effect of the Supreme Court decision in *Nolan Transport v. Halligan* ([1998] ELR 177) is to free internal trade union matters from unwarranted judicial interference'. Discuss critically.
8. Following a series of attacks on meat-processing factories by 'animal liberationists', the workers at Whiskas Unlimited, a cat food factory, approached management with a number of requests. Stating their fear that the factory would be the next to be attacked, they demanded that steps were taken to ensure that animals were slaughtered with a minimum of pain. They particularly demanded that the slaughter of calves was halted altogether, as this was something especially opposed by the animal liberationists. The workers also demanded improved security, an increase in the number of night watchmen, and the installation of security cameras around the factory. These requests were refused by management. The workers went on strike, albeit without full union support. They began to picket the factory gates, carrying placards, and shouting at anyone crossing the picket line. Management is extremely concerned at the potential damage to the company's image, and seeks your advice as to the legal status of the workers' actions. Advise management.