

Law for business

Law



1. Discrimination

1. 1 Definition

There is a various range of discriminations when employees are recruited into a job together with discrimination at the workplace such as sex, marital status or race discriminations in general, which are to be found in the Sex Discrimination Acts 1975 and 1986(SDA), the Race Relations Act 1976, the Employment Act 1989 and the Employment Rights Act 1996(ERA). In other words, it is unlawful where a person in relation to an employment is refused or deliberately omitted to offer the job (s. 6 (1)(c)), also where there are the arrangements (s. 6 (1)(a)) or terms (s. 6 (1)(b)) made for the purpose of deciding who should be offered the job on the grounds of sex, marital status, colour, race, nationality or ethnic or national origins.

1. 2 Types of discrimination

Discrimination can be divided into direct (s. 1 (1)(a)), indirect discrimination (single person (s. 1 (1)(b)), marital status (s. 3 (1)(b)). Mainly, direct discrimination occurs where an employer or prospective employer treats a person less favourably than another on grounds of sex, race, or marital status (Coleman V Skyrail Oceanic Ltd, The times, 1981), while indirect discrimination refers to where a condition or requirement, which is more difficult to comply with to one gender than the other, is attached to the employment (Bohon Mitchell V Council of Legal Education, 1878, IRLR 525).

Looking at the case study, on 02/10/02, Arnold applied for a vacancy for a cook in factory canteen of Dub Ltd, and was interviewed by one of directors,

Alfonse. Afterwards, Arnold was informed that his application was unsuccessful, being posted that the place advertised is to fill the post, but not a cook.

It can be applied to one of Unlawful Discriminatory Acts which is either 'arrangements made in deciding who shall be employed' (s. 6 (1)(a)) (Saunders V Richmond Upon Thames Council, 1977 IRLR 362 (EAT)) or 'refusal/omission to offer employment based on person's sex' (s. 6 (1)(c)) (Johnson V Timber Tailors (Midland) 1978 IRLR 146), subject to the normal SDA exemptions. Also, as mentioned above, it is subject to direct discrimination on grounds of either sex or race.

1. 3 Remedy

So, Arnold is able to raise a claim under s. 56 (1)(b) of the Race Relations Act 1976 (for direct discrimination) or Race Relations (Remedies) Act 1994.

As a remedy, there is no cap on monetary awards, whilst the Acts of 1975 and 1976 formerly contained caps of 11, 000 pounds. And the injury to feelings and aggravated damages is to be awarded.

However, the complainant, Arnold must make a tribunal application within three months after the act complained of. Also, the defendant, Dub Ltd may appeal to an employment tribunal within six weeks, but the ability of some persons to comply because of sex, marital status or race is considerably smaller and cannot be justified to Employment Appeal Tribunal (EAT).

But, once the agreement is made between them before the employment tribunal, the Advisory Conciliation and Arbitration Service officer will record <https://assignbuster.com/law-for-business/>

the agreement by way of a COT3 standard form. In this case, it would be the end. Nevertheless, they can still go all the way through Employment Appeal Tribunal, Court of Appeal (CA), House of Lords (HL) and finally European Court of Justice (ECJ).

2. Offer and Acceptance

2. 1 Definition of contract

A contract may be defined as an agreement enforceable by the law between two or more persons to do or abstain from doing some act or acts, their intention being to create legal relations and not merely to exchange mutual promises (Keenan D and Smith, *Advanced Business Law*, 1997). It could be made by a written document, oral or by conduct.

2. 2 Requirements of a contract

There are several steps to go through in order that a contract is to be legally binding. First of all, if an offer is made by offeror, it is to be accepted by offeree as a first step, which is not yet legally binding. Once an agreement (offer and acceptance) is made, bargain, which consists of agreement and consideration, comes next. Consideration refers to the payment for the items or conduct made by offeree. It is still not legally binding. Finally, intention should be involved to be legally binding.

In the case study, on 04/10/02, Mary made the first offer 4000 pounds about the invitation to treat that is 5000 pounds Giant Panda toy from Mike. Mike refused the offer, which means that the original offer is terminated and made the second offer (counter-offer) 4500pounds by Mike. But Mary did not

accept it on that day and left the acceptance open until 12 noon on 08/10/02, which means that specific time is given.

On 06/10/02, acceptance was made by post from Mary, stating 'half the money payable immediately, and the balance payable on delivery.'

But consideration was not completed because 2250 pounds of the balance was still outstanding. Finally, the toy was sold to the third party, James who is one of the friends of Mary.

In order to find out more details, it needs to be viewed through one by one.

2. 3 The procedure of making contract

A contract can be mainly divided into two big categories; bilateral and unilateral. The former indicates that a contract is aimed at a particular person, whereas the latter refers to a contract open to everyone, for instance, the advertisement for a lost cat with a certain reward, which will be given to anyone who have found the lost cat with his or her conduct.

In details, it is worth to distinguish between an offer and invitation to treat.

An invitation to treat such as advertisements on newspaper or displayed goods in shop, is any statement in negotiations which falls short of an offer and

is not legally binding (Fisher V Bell 1961, Carlill V Smoke Ball Co 1893).

If an offer is made, it can be terminated by rejection, revocation by offeror or the third party, lapse of general or specific time and counter offer. Counter offer is a rejection of the original offer and has effect of cancelling the

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original offer (Hyde V Wrench). Also, obviously when either party died. Besides, it needs to be beard in mind that offer and revocation are valid when received.

Returning case study, the advertisement '5000 pounds Giant Panda toy' is open to everyone and so it is not an offer and the first offer, 4000pounds made by Mary, is terminated by Mike refusing it, which means that the offer does not exist any longer. As the counter offer is made to Mary, the acceptance is to be made by Mary.

Acceptance can be made by fax, telephone, post or by conduct. But silence does not constitute acceptance (Felthous V Bindley 1862, Adams V Lindsell). According to the post rule, it is effective when posted (Adams v Lindsell), whereas the rest such as fax and telephone are valid when notified by offeror.

In the case study, for the acceptance, the specific time was given by 12 noon on 08/10/02 and is to be open until that time. On 06/10/02, according to the post rule, the acceptance posted by Mary fall into valid whether or not Mike received it.

On 07/10/02, Mike tried to revoke the offer by post, but it was too late to revoke (Byrne V Van Tienhoven). Until then, the agreement (offer and acceptance) is made.

There also should be sufficient consideration for the offer to be legally binding

In the case study, Mary enclosed the half of the price, 2250 pounds cheque, which is not sufficient to the full payment even if she said that she would pay it on delivery day. But it was not included in the offer and not communicated (Bloom V American Swiss Watch Co, 1915) between offeror, Mike and offeree, Mary. Then, the contract does not satisfy the consideration and communication. Therefore, it is not legally binding any longer.

Finally, the both parties should intend to be involved into the contract and have capacity to do so.

Back to case study, Mike has sent a letter intending not to sell the panda to Mary, which means that there is no intention from Mike. This is another reason to make the contract invalid.

2. 4 Remedy

There are several remedies available; damages, specific performance, injunction, rescission, rectification, compensation.

In the case study, it is valid until agreement, but due to insufficient consideration and no intention, the contract is not legally binding, so that the company, Dub Ltd does not have any legal rights against Mike for breach of contract.

3. creditors position

3. 1 Borrowing

A company has either an implied or express power to borrow (General Auction Estate and Monetary Co V Smith 1891, 3 Ch 432). Although it is <https://assignbuster.com/law-for-business/>

usual for the company's memorandum to give an express power to borrow a certain level of a loan such as debenture and mortgage, it is normally unlimited. Normally, the company authorises the director to borrow on behalf of the company and so, the director is able to make any types of borrowing allowed as an agent for the company.

In the case study, the director, Gerhard was given the power to borrow a loan as an agent and so, he advanced 525, 000 pounds to Dub Ltd, which actually issued two debentures; the first debenture is secured on the second mortgage on company small factor and the second one is secured on the floating charge on stock. Also, they have the first mortgage, 1million pounds issued by Highrisk Bank. In addition, the capital structure of Dub Ltd may result from that private company can not raise money from public.

3. 2 Lifting the corporate veil (Salomon v Salomon and Co. Ltd. 1893)

In winding up, it has got to be proven if the director is found guilty of fraudulent or wrongful trading, avoidance of the liability under an existing contract (Gilford Motor Co. v Horne), and the contractual capacity of a company stated in the objects clause of the memorandum. However, as long as there occurred no loss from the contract that falls outside the objects clause, which is called 'ultra vires', under s. 35 of the Company Act 1989, the contract is legally binding and the director who made the contract will be fine.

Returning case study, if any of the above applied to Gerhard, he would be the one who will be picked up and be responsible for the loss of the company

business or assets. However, Gerhard did well and eased the Dub Ltd from financial difficulties.