Outline Solutions to Questions in Chapter 14

1. What is a risk assessment, why is it important, and how should an employer go about conducting one? Give an example to illustrate your answer.

- Employers have a duty to provide a safe and healthy place for their employees and other people in their workplace. To make sure they comply with this, they have to undertake regular risk assessments.
- To do this, the employer has to undertake an assessment to identify potential risks to health and safety. He has to identify the likelihood of such risks causing any harm, the nature of that risk, and the number of people exposed to the risk. He then has to show that he has put in place proper systems to deal with the risk, depending on what the risk is.
- An example might be a cleaning company undertaking a risk assessment of the chemicals they use. They have to consider if the chemicals might, for example, cause eczema, and therefore supply their staff with masks and rubber gloves to wear if necessary. They will also, for example, have to consider how the chemicals might affect those with asthma, and pregnant women, and what actions they should take to protect such people.

2. Explain the differences between the different types of prohibited conduct.

- The types of prohibited conduct are set out in the Equality Act 2010. The main types are direct discrimination, indirect discrimination, harassment and victimisation.
- Direct discrimination is where someone is treated unfavourably compared to another person because of a protected characteristic. *Amnesty International v Ahmed* (2009)
- Indirect discrimination occurs where the employer has a policy (which the law calls a ‘provision, criterion or practice’) that he applies equally to all his employees, but which makes it more difficult for people with one type of protected characteristic to comply with than other who don’t have that characteristic. *London Underground v Edwards* (1995)
- Harassment – there are three types of harassment, but the main one consists of unwanted conduct which is related to a protected characteristic and has the purpose or effect of creating an intimidating, hostile, degrading humiliating or offensive environment for the complainant or violating his dignity. *Martin v Parkam Foods Ltd* (2006).
Victimisation – if a person makes a complaint about discrimination, or supports someone else in their complaint, and does this ‘in good faith’, in other words not maliciously in relation to a false complaint, then they are protected from being victimised, or treated badly because of their actions.

3. Jo is a transsexual who has undergone surgery to change her sex from male to female. She applies for a job as a hairdresser, but is rejected because the owner of the salon thinks that she does not really look the part. Does she have any legal remedy? Would your answer be any different if she applied for a job as a changing room assistant?

Direct discrimination because someone has changed gender is discriminatory, and cannot be justified. If the treatment is because of the change of gender, and not because of how Jo does her job, then this would be discrimination. If the changing room is a female one, Jo is to be treated as a female, and should be allowed to do the job. The employer may be able to argue an occupational requirement, but this is unlikely to succeed.

4. Sarah is a Druid. She wants to have time off to celebrate the summer solstice at Stonehenge, but her employer refuses. At about the same time, he allows some Muslims to take a few days off for Eid. Advise Sarah.

Druidism counts as a religion for the purposes of the Equality Act. The employer has to treat all religions equally. Sarah can bring a claim comparing herself to the Muslims, as the summer solstice counts as a religious festival for Druids. . However, it depends on when she asked for this leave. If, for example, Sarah’s Muslim colleagues had asked for their leave several months ago, and their absence will make the employer short-staffed, but Sarah only asked yesterday for time off next week, then the employer can argue that the refusal was not because of her religion, but because she asked for the leave late and he was short-staffed. This is not a justification, but the fact that she cannot show that any discrimination was ‘because of’ her religion.