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Qualifying Test Paper:

00440: Salaried Employment Judge, Employment
Tribunals (England and Wales) 2010

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CANDIDATE BRIEF

Please read carefully before you start the test

This test has been designed by judiciary from the Employment Tribunals and will assess the following qualities and abilities:

Intellectual Capacity:

- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

Authority and Communication Skills:

- Ability to explain the procedure and any decisions reached clearly and succinctly (in writing)

Efficiency:

- Ability to work at speed and under pressure

In accordance with the Lord Chancellor's guidance, the test is also designed to give an indication of candidates understanding of, or potential to learn, employment law.

You have 90 minutes to complete the entire test.

You should attempt to answer every question.

The following is a breakdown of marks available and should help you apportion your time between the questions:

Scenario 1 is worth a maximum of **57** marks

Scenario 2 is worth a maximum of **38** marks

Scenario 3 is worth a maximum of **20** marks

- **The answers will be marked anonymously, so please mark each page of your script with your candidate number only.**
- **You do not have to answer the questions in any particular order, but please mark each section of your answer script clearly with the corresponding question number.**
- **You should give your reasons for each answer.**
- **Bullet points can be used where you find this convenient.**

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Introduction

For the purpose of this test you are an Employment Judge. You are asked to read and consider the fictional scenarios, and answer the questions which follow. You are expected to identify and analyse the issues. Your answers must be supported by reasons.

Case scenario 1 [57 marks]

WPN Ltd is a company with a registered office and administrative base in London. It owns and publishes *World Political News*, a newspaper. The newspaper has a worldwide circulation. It is published weekly in several different languages. The newspaper reports and comments upon world events. Its objective is to be fearless in its political analysis of national governments.

WPN Ltd maintains offices in the capital cities of several major countries. In each office is a team of investigative journalists producing reports, articles and editorials for the newspaper. In practice, a team comprises men and women from different ethnic and religious backgrounds. Each team is led by a local General Manager. He or she is required to have a degree-level qualification in politics and suitable experience in journalism. WPN's policy is that a General Manager may not be a national of the country in which his or her team is based. This is designed to promote objectivity when reporting events or developments in that country.

On 1 May 2009 a vacancy arose for the General Manager's post in Paris. It was advertised in *World Political News*. Applications were invited from candidates with appropriate academic qualifications and suitable experience in journalism. No mention was made of any restriction on nationality.

Victor Hugo, who is of French national origin, had lived most of his life in France. However, for the last 8 years he had been General Manager of the newspaper in London. He easily satisfied the academic and experiential requirements for the vacancy. He saw the vacant post as an ideal opportunity to relocate to France for family reasons. He applied for the vacancy on 15 May 2009.

On 1 June 2009 WPN Ltd rejected Victor Hugo's application on the ground that he was unsuitable for the post. There were no other applications for the post. The vacancy remained unfilled.

Victor Hugo is 55 years old. He concluded that he must have been rejected for the post solely because of his age. He believed that he satisfied the academic and experiential requirements for the vacancy. He knew that he already held the comparable post in London.

On 15 August 2009 Victor Hugo presented a claim to the Employment Tribunal. He complained of age discrimination in relation to the rejection of his application for the Paris post. In the particulars of his claim he referred to his academic qualifications and his experience. He asserted that, so far as he was aware, no one over the age of 50 years had been recruited by WPN to a post of General Manager in any country in the past.

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On 12 October 2009 WPN Ltd presented its response to the Employment Tribunal. It denied any suggestion of age discrimination. It pleaded its policy that a General Manager may not be a national of the country in which his or her team is based. The response cited seven examples of General Managers who had been recruited previously at ages ranging between 50 years and 62 years. WPN Ltd stated that, if Victor Hugo persisted with an allegedly misconceived claim, it would seek an order for costs against him.

Victor Hugo then took legal professional advice. He was told that there was no reasonable prospect of succeeding in a claim of age discrimination in the circumstances. He was advised that WPN's policy on nationality amounted to race discrimination. In consequence, Victor Hugo wrote to the Employment Tribunal on 1 November 2009 and asked for leave to amend his claim to include a complaint of race discrimination.

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QUESTIONS

- Q1 How will the Employment Tribunal decide whether to allow the amendment to the claim to include a complaint of race discrimination? **[9 marks]**
- Q2 How would it affect your answer (in Question 1) if the applicant was to withdraw the complaint of age discrimination and to substitute the complaint of race discrimination? **[5 marks]**
- Q3 What issues arise in respect of the timing of the application to amend the claim? **[5 marks]**
- Q4 What are the elements of 'direct race discrimination'? **[5 marks]**
- Q5 What do you understand by the term 'indirect race discrimination'? **[6 marks]**
- Q6 Assuming that the claim is amended, what basis might there be for Victor Hugo succeeding in a complaint of direct race discrimination? **[5 marks]**
- Q7 Assuming that the claim is amended, what basis might there be for Victor Hugo succeeding in a complaint of indirect race discrimination? **[6 marks]**
- Q8 What, if any, relevance is WPN's policy on nationality in the context of a complaint of direct race discrimination and/or a complaint of indirect race discrimination? **[5 marks]**
- Q9 At the hearing of Victor Hugo's claim, WPN denies race discrimination, but pleads that Victor has suffered no loss in any event. WPN contends that he is already employed as a General Manager in London and that the salary offered in Paris is lower because the team there is smaller and has a lighter workload. If Victor Hugo was to succeed in his complaint of race discrimination, how would this evidence affect the question of remedies? **[5 marks]**
- Q10 At the hearing of Victor Hugo's claim, he gives evidence that, when he learned that he had been rejected for the Paris vacancy because he was a French national, he felt profoundly insulted. He also suspected that British colleagues in the London office made fun of him behind his back as a result. If Victor Hugo was to succeed in his complaint of race discrimination, how would this evidence affect remedy? **[6 marks]**

Case scenario 2
[38 marks]

Discoball Ltd is the owner of a nightclub in Liverpool. The club has suffered a serious decline in profits. Its competitors have attracted an increased number of younger customers, while Discoball has not.

In an effort to remedy the situation, the club has decided to admit teenagers between the ages of 13 years and 15 years on Tuesday evenings each week. They will be admitted free of charge and will be sold soft drinks. The club will provide music and entertainment appropriate to that age group.

Discoball Ltd concludes that it is essential that on Tuesday evenings the club must be staffed by employees between the ages of 18 years and 21 years. The club management fears that older staff may deter the age group they want to attract. Accordingly, Discoball Ltd advertises in the local press for bar staff to work at the club between 5 p.m. and 10 p.m. every Tuesday. The advertisement states that, as the club will be open to young teenagers on that day, the bar staff must be no older than 21 years of age.

QUESTIONS

- Q11 Joe sees the advertisement and applies for the job. He is 22 years old. His application is rejected. What, if any claim, might Joe present to the Tribunal and what are his chances of success? **[14 marks]**
- Q12 Jean is 22 years old, but states in her application that she is 19 years old. She is offered employment by Discoball Ltd. Later, her true age comes to light. She is dismissed because of her age. What, if any claim, might Jean present to the Tribunal and what are her chances of success? **[14 marks]**
- Q13 Fred is also 22 years old, but states in his application that he is 19 years old. Later, his true age is discovered. However, Discoball admitted that there is no evidence that employing him has deterred teenagers from attending the club. Nevertheless, the company dismissed him for gross misconduct. The gross misconduct is said to be his dishonesty in completing the details of his age in the application form. Fred was dismissed 11 months after commencing his employment. What, if any claim, might Fred present to the Tribunal and what are his chances of success? **[5 marks]**
- Q14 Peter is 19 years old but looks older. He is taken for being at least 25 years old. Discoball Ltd refuses to employ him for this reason. What, if any claim, might Peter present to the Tribunal and what are his chances of success? **[5 marks]**

Case scenario 3
[20 marks]

The National Theatre Company of Wessex plans to stage a play about a young music star in her early twenties. The Company advertises in a professional journal for an actress to play the lead part. Jane is an experienced actress and is 48 years old. She applies for the part but is turned down because of her age.

QUESTIONS

Q15 How might the Company successfully defend a claim for direct age discrimination brought by Jane? **[15 marks]**

Q16 How might your answer be different if the Company had planned a radio adaptation of the play? Assume that Jane applied for the role, but was still rejected. **[5 marks]**

List of materials to research in preparation for the Qualifying Test for the Salaried Employment Judge Selection Exercise (00440)

(Please note the provisions of the Equality Act 2010 are to be ignored for the purposes of this Qualifying Test)

Document number	Document title	Sections
1	Cocking v Sandhurst (Stationers) Ltd 1974 ICR 650	
2	Race Relations Act 1976	Parts 1 and 2 Part 8 - Sections 54, 54A, 56 and 57
3	James v Eastleigh Borough Council (CA) 1989 IRLR 318	
4	James v Eastleigh Borough Council (HL) 1990 IRLR 288	
5	Selkent Bus Company Ltd v Moore 1996 IRLR 661	
6	Employment Rights Act 1996	Section 98, 98ZA, 98ZB, 98ZC, 98ZD, 98ZE, 98ZF and 98ZG
7	Nagarajan v London Regional Transport 1999 IRLR 572 HL	
8	Vento v Chief Constable of West Yorkshire Police (No.2) 2003 IRLR 102	
9	Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 as amended	
10	Employment Equality (Age) Regulations 2006	Parts 1 and 2
11	Amnesty International v Ahmed 2009 IRLR 884	