



Parklane Plowden Chambers & Newcastle Law School Year 12 Essay Competition

Guide

Question - choice of either

- a) The time has come for no-fault divorce. Discuss

OR

- b) Should zero-hours contracts be banned?

Word Limit 1000 (excluding references) - to be submitted electronically together with Competition Entry Form (found on Newcastle Law School home page under Working with Schools) by August 31 2019.

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See below for some guidance on both essay topics. This guidance will help students develop an overview of the topics. Students are strongly encouraged to consult with a wider range of materials than those listed below.

ESSAY GUIDE A - NO FAULT DIVORCE

Background:

Currently the only ground for divorce is that the marriage has irretrievably broken down. Irretrievable breakdown may be shown by establishing one of five different grounds set out in Section 1(2) of the Matrimonial Causes Act, 1973 (MCA 1973). These are as follows:

- a) adultery
- b) behaviour that makes continuing to live together unreasonable
- c) desertion
- d) separation of more than two years (if spouse agrees to the divorce)
- e) separation of at least five years (if spouse disagrees with the divorce).

The last two grounds are based on a period of separation, and the other three require one spouse to make allegations about the conduct of another.

In 1990 a Law Commission report, *Family Law the Ground for Divorce* (Law Com 192, 1990) set out six problems with fault-based divorce, including that the law was confusing and misleading, discriminatory and unjust, distorted bargaining positions, provoked unnecessary hostility, made things worse for children by exacerbating parental conflict whilst at the same time doing nothing to save marriages. Consequently Parliament went on to enact a no-fault divorce regime with the *Family Law Act 1996* but logistical challenges meant that this was never implemented.

Current Context:

The recent Supreme Court case of *Owens v Owens* [2018] UKSC 41 put the idea of no-fault divorce firmly back on the political and law reform agenda.

In this case, Mrs Owens issued a divorce petition in February 2015 on the ground that Mr Owens had behaved in such a manner that she could not reasonably be expected to live with him (ground b of section 1(2) MCA 1973). Mr Owens defended the suit. At the original trial, the trial judge found that the examples of unreasonable behaviour put forward by Mrs Owens were flimsy and exaggerated and that the test under section 1(2)(b) as not met. Mrs Owens appealed against this decision to the Court of Appeal, but her appeal was dismissed ([2017] EWCA Civ 182). She then appealed to the Supreme Court. The Supreme Court unanimously dismissed Mrs Owens' appeal on the basis that the trial judge had correctly applied the test under s.1(2)(b) of the MCA 1973. Judges in both the Court of Appeal and the Supreme Court demonstrated their unhappiness with the current law and of the decision they were bound to make, but said it was for Parliament and not the judiciary to change the law. Giorgia Sessi, of Parklane Plowden Chambers, commented in the Parklane Plowden Family Team Under 10's Newsletter (Spring 2019) that 'this "blame-placing" element is at odds with the wider family justice system, which is focused on resolving issues in a non-

confrontational way'. (See <https://www.parklaneplowden.co.uk/news/family-team-under-10s-spring-2019-newsletter> - accessed 24/06/2019)

In September 2018, the Ministry for Justice published a consultation paper, *Reform of the legal requirements for divorce*. In April 2019, the Government published its response to the consultation. David Gauke, Lord Chancellor and Secretary of State for Justice announced that as soon Parliamentary time allows, legislation would be introduced to change the law by removing the legal requirement to make allegations about spousal conduct.

Useful Resources

You might find some of the following helpful when thinking about your argument. This is by no means an exhaustive list, you are strongly encouraged to use a variety of sources to help support the argument that you advance in your essay

Matrimonial Causes Act, 1973

<https://www.legislation.gov.uk/ukpga/1973/18>

Owens v Owens [2018] UKSC 41

<https://www.supremecourt.uk/cases/uksc-2017-0077.html> or
<http://www.bailii.org/uk/cases/UKSC/2018/41.html>

Owens v Owens [2017] EWCA Civ 182

<https://www.judiciary.uk/wp-content/uploads/2017/03/owens-v-owens.pdf>

Ministry of Justice Consultation Paper - **Reducing family conflict** Reform of the legal requirements for divorce (September 2018)

https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/supporting_documents/reducingfamilyconflictconsultation.pdf

Reducing family conflict - Government response to the consultation on reform of the legal requirements for divorce (April 2019)

<https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/results/reducing-family-conflict-consult-response.pdf>

House of Commons Library Research Briefing - No Fault Divorce:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01409>

House of Commons Briefing Paper:

<https://researchbriefings.files.parliament.uk/documents/SN01409/SN01409.pdf>

Previous Calls for introduction of no-fault divorce - see Professor Liz Tinder Nuffield Foundation Report *Finding Fault - Divorce Law and Practice in England and Wales* (October 2017):

<http://findingfault.org.uk/research-findings-final-report/>

Law Commission report, *Family Law the Ground for Divorce* (Law Com 192, 1990):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228985/0636.pdf

ESSAY GUIDE B - ZERO-HOURS CONTRACTS

Background:

Zero hours contracts, also known as casual contracts, are those contracts under which there is no guarantee of work. They are usually for 'piece work' or 'on call' work. This means that the employee is on call to work when they are needed but the employer does not need to give them any work nor does the employee have to do the work when asked. The employee is only paid for the work that they actually perform. Zero-hours employees are, however, entitled to statutory annual leave and the National Minimum Wage (National Minimum Wage Regulations 2015/621reg.30). In the Small Business, Enterprise and Employment Act 2015 it states that an employee can ignore a clause in their contract if it bans them from:-

- Looking for work
- Accepting work from another employer.

However, although zero-hours workers are entitled to statutory annual leave, there are often terms in the contracts that state that they are not entitled to any holiday or sick pay.

The increased use of this type of contract has caused a lot of controversy.

Current Context:

The recent Court of Appeal case of Uber BV v Aslam [2018] highlights some of the issues surrounding zero-hours contracts. The case was brought by two Uber drivers who were represented by the Independent Workers' Union of Great Britain.

In 2016 the Employment Tribunal and Appeal Tribunal had ruled that the Uber drivers were workers. This appeal heard in December 2018 was against that decision.

The Court of Appeal upheld the 2016 ruling that Uber drivers were not self-employed. The Court found that they were regular workers who therefore qualified for basic rights such as holiday & sick pay and the minimum wage.

Uber had argued in Court that the employment contract was between the driver and the passenger and that the App acted as an intermediary providing booking and payment services. An Uber spokesman said that the decision of the Court of Appeal does not reflect why the vast majority of Uber drivers used it.

He said "Almost all taxi and private hire drivers have been self-employed for decades, long before our APP existed. Drivers who use the Uber app make more than the London Living Wage and want to keep the freedom to choose if, and when they drive" (The Telegraph 12/06/2019).

This can be contrasted with the case of the Independent Workers' Union of GB v RooFood (t/a Deliveroo) [2017] 11 WLUK 313. This was a different type of case called a Judicial Review and was heard in the High Court. In November 2017 the Central Arbitration Committee had held that Deliveroo riders were not 'workers' as defined by

s296 of the Trade Union and Labour Relations (Consolidation) Act 1992, as they did not have a contractual obligation to perform work personally because they could substitute their jobs both before and after accepting a job. This meant that The Independent Workers Union of Great Britain could not rely on that Act to support the Deliveroo riders. So the Union challenged that decision in the High Court under the Judicial Review process but lost their case in the High Court. In their decision, the High Court confirmed that they were unable to interfere with the decision that riders were not workers.

There are several other recent cases that concern zero-hours contracts. You will need to look at the advantages and disadvantages of this type of employment contract and decide your position on this legal issue.

Useful Resources

You might find some of the following helpful when thinking about your argument. This is by no means an exhaustive list, you are strongly encouraged to use a variety of sources to help support the argument that you advance in your essay

Small Business, Enterprise and Employment Act 2015

<https://www.legislation.gov.uk/ukpga/2015/26>

Uber BV v Aslam [2018] EWCA Civ 2748

www.judiciary.uk/judgments/court-of-appeal-judgment-uber-v-aslam-others

Independent Workers' Union of GB v RooFood (t/a Deliveroo) [2017] 11 WLUK 313

<https://www.bailii.org/ew/cases/EWHC/Admin/2018/3342.html>

Government Website

<https://www.gov.uk/contract-types-and-employer-responsibilities/zero-hour-contracts>

House of Commons Library Research Briefing - Zero Hours Contracts:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06553>

Low Pay Commission Report

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765193/LPC_Response_to_the_Government_on_one-sided_flexibility.pdf