Prior to attending the Law Subject Masterclass on Thursday 20 May, please read through the materials below, which will be discussed in one of your taster sessions.

During the live Masterclass, our staff and CAMbassadors will discuss this case. In preparation for the session, you’re asked to consider the following questions, and how you would answer them:

1) Is there unlawful discrimination in this case? On what ground(s)?
2) Is it direct or indirect?
3) Could it be justified?
4) Should any damages be awarded?

**Bert v Ernie**

Ernie has run a bakery business in Arcadia since 1992. He has six shops, 50 employees and offers his products on-line throughout Arcadia. Ernie is Christian and holds the religious beliefs that:

- (a) the only form of full sexual expression which is consistent with Biblical teaching (and therefore acceptable to God) is that between a man and a woman within marriage; and

- (b) the only form of marriage consistent with Biblical teaching (and therefore acceptable to God) is that between a man and a woman.

He has sought to run his bakery in accordance with his beliefs, but this has not been advertised or otherwise made known to the public.

Bert is a gay man who volunteers in an organisation called ‘Statler and Waldorf’ for the lesbian, gay, bisexual and transgender (LGBT) community. While this organisation is not a campaigning one, it supports the campaign in Arcadia to enable same sex couples to get married. A motion supporting this was narrowly rejected by the Arcadian Assembly in 2017. There is a political debate going on in Arcadia about whether same sex couples should be allowed to get married. Bert was invited to attend a private event organised by the organisation on Friday 17 May 2017 to mark the end of the Arcadian anti-homophobia week and the political momentum towards same-sex marriage. He decided to take a cake to the party.

He had previously bought cakes from Ernie’s shop but he was not personally known to the staff or to Ernie. He did not know anything about Ernie’s beliefs about marriage and neither Ernie nor his staff knew of his sexual orientation. Ernie offered a “Build-a-Cake” service to customers. Customers could request particular images or inscriptions to be iced onto a cake. There was a leaflet advertising this service, with various examples of what could be done, but no religious or political restrictions were mentioned.
On 9 May 2017, Bert went into the shop and placed an order for a cake to be iced with his design including the LGBT organisation’s logo, and the headline “Support Gay Marriage”. Ernie took the order but raised no objection at the time because he wished to consider how to explain his objection and to spare Bert any embarrassment. Bert paid for the cake. Over the following weekend, Ernie decided that he could not in conscience produce a cake with that slogan and so should not fulfil the order. On Monday 12 May 2017, Ernie telephoned Bert and explained that his order could not be fulfilled because they were a Christian business and could not print the slogan requested. He apologised to Bert and said that anyone who requested that message would have been treated the same way. Bert was given a full refund. Given the advanced time, Bert had to make an express order for a cake elsewhere at double the original cost.

Advise Bert/Ernie/How should this case be decided, taking into account the relevant applicable legislation set out below:

The relevant parts of the **Arcadian Equality Act** provide:

**Article 1 Direct discrimination**

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

**Article 2 Indirect Discrimination**

A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

**Article 3 Protected characteristics**

“Sexual orientation” means a sexual orientation towards “(a) persons of the same sex; (b) persons of the opposite sex; (c) persons of the same sex and of the opposite sex”.

“Religion” means any religion and a reference to religion includes a reference to a lack of religion.

**Article 4**

It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services by refusing or deliberately omitting to provide him with any of them.
Arcadia has signed and is bound by the **Utopian Convention on Human Rights** which provides:

**ARTICLE 9 Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

**Article 10 Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.