

## *Detailed Contents*

1. The Problem	1
1.1. The Search for a Foundation	4
1.2. A Way Forward	9
1.3. The Dataset	13
1.4. The Argument	17

### I: SCOPE AND DEFINITION

2. The Essence of Discrimination Law	23
2.1. A Thought Experiment	25
2.2. The Personal Grounds Condition	27
2.3. The Cognate Groups Condition	30
2.4. The Relative Disadvantage Condition	31
2.5. The Eccentric Distribution Condition	38
2.6. Conclusion	42
3. The Architecture of Discrimination Law	45
3.1. The Protectorate	49
3.1.1 Group Disadvantage	51
3.1.2 Normative Irrelevance	56
3.1.3 On Symmetry	61
3.2. The Duty-Bearers	62
3.3. The Duties	67
3.3.1 Direct Discrimination	69
3.3.2 Indirect Discrimination	73
3.3.3 Reasonable Accommodation	76
3.3.4 Discriminatory Harassment	79
3.3.5 Affirmative Action	80
3.3.6 Rights-Generating and Non-Rights-Generating Duties	86
3.4. Conclusion	87



## II: POINT AND PURPOSE

4. A Good Life	91
4.1. Well-Being	92
4.2. Secured Negative Freedom	98
4.3. Secured Access to an Adequate Range of Valuable Opportunities	102
4.4. Secured Self-Respect	108
4.5. Interconnections between the Three Goods	112
4.6. Comparative but Not Egalitarian	113
4.7. Conclusion	115
5. The Point of Discrimination Law	117
5.1. The Goal of Discrimination Law	117
5.2. Justification of the Goal	121
5.2.1 Negative Freedom	123
5.2.2 Adequate Range of Valuable Opportunities	124
5.2.3 Self-Respect	126
5.2.4 Discrimination Law and the Basic Goods	128
5.3. Debate with Egalitarians	130
5.4. Perfectionism in Discrimination Law	134
5.5. Conclusion	137

## III: DESIGNING THE DUTIES

6. The Antidiscrimination Duty	143
6.1. Action-Regarding Duty	146
6.2. The Adverse Effect Clause	148
6.2.1 Tangible and Expressive Effects	149
6.2.2 Comparative and Non-Comparative Effects	151
6.2.3 The Levelling-Down Objection	153
6.3. The Group Membership Clause	154
6.3.1 Systemic Wrongfulness	155
6.3.2 Direct and Indirect Discrimination	156
6.3.3 A Common Definition	159
6.3.4 Lay and Legal Models	160
6.3.5 Doctrinal Difficulties with the Lay Model	162
6.4. The Correlation Clause	165
6.4.1 Causation to Correlation	166
6.4.2 Wrongfulness of Particular Acts	167
6.5. The Expressive Clause	171



6.6. The Justification Clause	180
6.6.1 Justification and Proportionality	181
6.6.2 Permitted and Justified Discrimination	181
6.6.3 Legislative and Judicial Determination	182
6.6.4 Wrongfulness and Standard of Review	183
6.6.5 Interests of the Duty-Bearer	186
6.6.6 Interests of the Victims	191
6.6.7 Interests of Third Parties	191
6.7. Conclusion	192
7. The Duty-Bearers	195
7.1. Public Character	201
7.2. Gatekeepers of Opportunities	209
7.3. Conclusion	212
8. Affirmative Action	215
8.1. A Definition	217
8.2. Legitimacy of Affirmative Action Measures	222
8.2.1 Interests of the Beneficiaries	222
8.2.2 Interests of the Administrator	225
8.2.3 Interests of Those Adversely Affected	228
8.2.4 Public Interest	233
8.3. Conclusion	239
IV: CONCLUSION	
9. The Vindication of Discrimination Law	243
9.1. Significance and Implications	246
9.2. Possibilities	248
<i>Bibliography</i>	251
<i>Index</i>	261