



LAW SCHOOL

University of Glamorgan

Constitutional and Administrative Law

Lectures and Workshops

2006-2007

LLB
YEAR ONE

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CONSTITUTIONAL AND ADMINISTRATIVE LAW

LECTURE AND WORKSHOP SCHEDULE 2006-2007

Chapters refer to **CONSTITUTIONAL AND ADMINISTRATIVE LAW** by CHSPURIN et al

LINKS : <http://www.nadr.co.uk/links/links.php?category=43> or

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Week Starting		LECTURES THURSDAY 10-12 GT136	WORKSHOP TOPIC
02.10.06	1	Course Overview : What is a constitution? Ch 1	1a Studying Constitutional Law
09.10.06	2	Police Powers Ch 7	1b What is a constitution? Ch 1
16.10.06	3	Police Powers Ch 7	2a Police Powers Ch7
23.10.06	4	Public Order 2 Ch8	2b Police Powers Ch7
30.10.06	5	Public Order 2 Ch8	3a Public Order Ch8
06.11.06	6	Judicial Review Ch 11	3b Public Order Ch8
13.11.06		READING WEEK	READING WEEK
20.11.06	7	Judicial Review Ch10 & Ch 11	4a Judicial Review Ch 11
27.11.06	8	UK Sovereignty Ch 2 & Ch4	4b Judicial Review Ch 11
04.12.06	9	EU Sovereignty Ch 3	5a Sovereignty Ch2,3 & 4
11.12.06	10	Electoral Systems Ch 6 :	5b Sovereignty Ch2,3 & 4
18.12.06		Vacation	Vacation
25.12.06		Vacation	Vacation
01.01.07		Vacation	Vacation
08.01.07	11	House of Lords Ch6	6a Parliament : Elections & HoL Ch6
15.01.07	12	Conventions & Doctrines Ch5:	6b Parliament : Elections & HoLCh6
22.01.07	13	Constitutional Conventions & Doctrines : Rule of Law Ch14 & Separation of Powers Ch15	7a Conventions Ch5
29.01.07	14	Ministerial Responsibility Ch9	7b Conventions Ch5
05.02.07	15	Ministerial Responsibility Ch9	8a Ministerial Responsibility Ch9
12.02.07	16	Prime Minister & Cabinet 1 Ch 9	8b Ministerial Responsibility Ch9
19.02.07		READING WEEK	READING WEEK
26.02.07	17	Prime Minister & Cabinet 1 Ch 9	9a Cabinet & Prime Minister Ch9
05.03.07	18	Executive Power Ch10	9b Cabinet & Prime Minister Ch9
12.03.07	19	Executive Power Ch10	10a Executive powers Ch10
19.03.07	20	Human Rights Ch13	10b Executive powers Ch10
26.03.07	21	Ombudsman / PCA Ch 12	11a Q&A
02.04.07		Vacation	Vacation
09.04.07		Vacation	Vacation
16.04.07		Vacation	Vacation
23.04.07	22	Examination Techniques Ch1 : Revision	11b Q&A
30.04.07		Revision week	Revision week
07.05.07		Examinations begin	Examinations begin
14.05.07		Examinations	Examinations
21.05.07		Examinations end Friday	Examination end Friday

CONSTITUTIONAL AND ADMINISTRATIVE LAW

LECTURES : WEEK 1

INTRODUCTION TO CONSTITUTIONAL LAW

INTRODUCTION

- Who can have a Constitution ? - Any organisation, business, club, country.
- What is a Constitution ?
A body of rules governing the relationship between the governor and governed and the internal relationships between the governing office holders and constituent bodies.
Bollingbroke : *'That assemblage of laws, institutions and customs according to which the community hath agreed to be governed.'*
De Smith : *' a regular system of government, with . a complex of rules defining the composition, function and interrelationship of the institutions of government, and delineating the rights and duties of the governed ...'*¹
Stephen Sedley : *" ... whilst all Constitutional law pre-supposes the existence of a Constitution there is a subtler sense in which it can be said that in this country we have Constitutional law without having a Constitution ... because .. our Constitution is merely descriptive : it offers an account of how the country has come to be governed and importantly in doing so it confers legitimacy on the arrangements it describes. But if we ask what the governing principles are from which these arrangements and this legitimacy derive, we find ourselves listening to the sound of silence."*
- Contents of the Constitution
 - Rules on appointment and dismissal of the governors.
 - Executive, Legislative and Judicial processes
 - Public law rights and duties of the governed.
 - Powers of the governors to control crime and the legal process.
- How important is Constitutional Law?
The constitution determines the democratic credentials of the state - accountability.
- Sources of Constitutional Law
 - The legal rules of the Constitution.
 - Rules of the Constitution which are not laws.
- Classification of Constitutions
 - Written or unwritten (.e.g. US Constitution).
 - Unitary or Federal (UK is unitary – Germany and US have Federal Systems.)
 - Flexible or Ridged (the level of difficulty involved in changing the constitution).
 - Monarchical or Republican (UK is monarchical, US is republican).
 - Separated or fused powers. (US is ostensibly separated – UK system is fused)
 - Supreme or, subordinate (US Constitution is supreme – UK is subordinate to the Law.)

DEVELOPMENT OF THE ENGLISH LEGAL SYSTEM

- Pre-conquest legal system – customary law
- Conquest 1066 : Curia Regis – King's Bench : Establishment of common law – the writ system – travelling justices – precedent – early statutes. Development of common law inhibited by limited by the writ system. Battle between local and central courts. Wide range of courts.
- Petitions to the king to resolve injustices arising out of harshness of common law and gaps in the common law led to the development of Equity in the Court of Chancery.

¹ De Smith : Constitutional Law :

CONSTITUTIONAL AND ADMINISTRATIVE LAW

- Equity held to prevail over the common law as a gloss on the common law. Equity provides legal principles – not a system of law. Principles became fixed but have continued to develop. The relationship between Common Law & Equity
- The Age of Reform : The Supreme Court of Judicature merged the courts of law and equity. The Present Day Legal System
- Common Law remedies : Damages, injunction and declaration – Equitable Grounds : duress.
- Equitable remedies : Rescission, specific performance, estoppel – Equitable Grounds : undue influence.

DEVELOPMENT OF THE STRUCTURE OF THE BRITISH CONSTITUTION

- 1066 – establishment of an absolute monarchy in a feudal England. Monarchy increasingly supported by the Privy Council over time, through to the establishment of the House of Lords and the House of Commons. Landmark events include the Magna Carta.
- The end of feudalism and the rise of commerce, the agrarian and industrial revolutions saw the movement of wealth from land-owners to the mercantile classes. Population expanded from 1.5 to 60 million. Government became gradually more complex. Numbers involved in government expanded throughout the period.
- Parliamentary model established : House of Commons, House of Lords and the Crown supported by an independent judiciary. Role of Parliament became central to government and the crown ceded control to parliament – assisted by the Civil War (Oliver Cromwell and the New Model Parliament) and the bloodless revolution in the 17th Century (Enter William and Mary and the Bill of Rights).
- In the 20th Century, House of Lords ceded power to the House of Commons and the ever expanding franchise (frequent electoral reforms from 1832 to 1968). 1911 & 1948 Parliament Acts
- The territory gradually consolidated to include Wales, Ireland, Scotland and various off shore islands, reaching a climax with the British Empire. Since 1900 (The USA left in the 19th Century) Great Britain and the UK has gradually shrunk, losing Southern Ireland and most of its empire to independent common-wealth status.
- The scope of sovereignty has been further eroded by membership of the European Union – and sovereignty is self limited by the growth of supra-national bodies such as the UN and by global trade which limits the freedom of action of all independent states.

FUNCTIONS OF LAW

- Law provides a formal means of social control
- Law provides a forum for settling disputes.
- Law can be used by the State as an instrument of change.
- Law provides the citizen and the state with security

CLASSIFICATION OF LAW – Classified by objectives and relationships

- Public law : Supervisory jurisdiction of Q.B.D. High Court
- Private / Civil Law before the Civil Courts
- Criminal Law before the Criminal Courts
- International Law before the International Courts

CONSTITUTIONAL AND ADMINISTRATIVE LAW

THE PRINCIPAL CONSTITUTIONAL PUBLIC OFFICES IN ENGLAND AND WALES

- The Prime Minister. Leader of the Party that commands a majority in the House of Commons. Primus Inter-pares. Leader / chairman of the cabinet. Front person of the executive. Currently Tony Blair, replacing John Major preceded by Margaret Thatcher.
- The Home Secretary. Responsible for Law and Order – prison service. Currently Charles Clarke replacing David Blunkett.
- The Foreign Secretary. Responsible for foreign policy, the armed forces and treaties. Currently Jack Straw - replacing Geoff Hoon – replacing Robin Cook.
- The Lord Chancellor. Changing role – currently Minister of Constitutional Affairs – Speaker of the House of Lords and head of the judicial process. Currently Charlie Faulkner replacing Lord Irvine, preceded by Lord Mackaye of Clashfern.
- The Chancellor of the Exchequer. Heads up the Treasury. Responsible for the budget and all things financial. Currently Gordon Brown.
- The Speaker of the House of Commons. Chairman of the House of Commons – controls debates, discipline – chooses who speaks. Purportedly non-political and unbiased. Currently Michael Martin (Usually alternates between political parties – but not this time).
- The Attorney General (A.G.). Senior Legal Advisor to the government. Currently Lord Goldsmith Q.C.
- The Solicitor General. (S.G.) Senior legal officer to the government – deputy to the AG – a minister of the Crown – currently Harriet Harmon.
- The Director of Public Prosecutions (D.P.P.) Conducts public prosecutions on behalf of the government where required by statute – role less important since the introduction of the Crown Prosecution Service (CPS). Currently Ken Macdonald Q.C. (Tendered resignation)
- The Lord Chief Justice. Responsible for the courts – head of the judiciary – Currently Lord Phillips who replaced Lord Woolfe on the 29th September 2005.
- The Master of the Rolls. President of the Civil Division of the Court of Appeal. Most famous earlier M.R. – Lord Denning. Last holder of the office was Lord Phillips.
- The Parliamentary Commissioner for England and Wales – responsible for monitoring administrative incompetence on behalf of complaining citizens. Currently Ann Abraham.
- Bank of England : Now an independent body – no longer a government office - (QUANGO) which sets interest rates – in charge of the Royal Mint and currency – holds the UK bank reserves and determines the fiduciary issue – level of government borrowing relative to government borrowing and gold reserves – contrast Europe where the European Central Bank determines the levels of borrowing permitted by states who have adopted the Euro.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Workshop 1

Constitutions and Parliamentary Sovereignty

1. What is a constitution and what types of things are contained in a constitution?
2. Identify, compare and contrast the various types of constitution.
3. What can the constitution of a country tell you about that country?
4. Why is it important to understand the constitution?

GENERAL DISCUSSIONS WITH TUTOR ON

HOW TO STUDY CONSTITUTIONAL LAW

HOW TO WRITE CONSTITUTIONAL LAW ESSAYS

HOW TO RESPOND TO PROBLEMS QUESTIONS

CONSTITUTIONAL AND ADMINISTRATIVE LAW

LECTURES : WEEK 2 & 3

FREEDOM OF THE PERSON AND PROPERTY : POLICE POWERS

INTRODUCTION

- Tort
 - Assault
 - Battery :
 - False Imprisonment
 - Offences Against the Persons Act 1861
- Reasonable Suspicion

POLICE POWERS OF STOP AND SEARCH

- s66 Metropolitan Police Act
- Police Obstruction.. s89 Police Act 1996
- When is a police constable acting in the execution of his duty?

POWERS TO STOP AND SEARCH - PART 1 PACE 1984

- Power of constable to stop and search persons, vehicles etc. s1-4 PACE 1984
- What is meant by 'reasonable grounds for suspicion'?
- Annex B of the Code of Practice s66 PACE
- The Criminal Justice and Public Order Act 1994
- Road Traffic Act 1988
- European Convention on Human Rights 1950 Articles 5-8

ENTRY / SEARCH OF PREMISES AND SEIZURE OF PROPERTY THEREIN - PART II PACE 1984

ENTRY AND SEARCH WITH A WARRANT s8, 15, 16, 17 PACE 1984

ENTRY AND SEARCH AFTER ARREST s18 PACE 1984

POWERS OF SEIZURE UNDER PACE s19, 20,21, 22 PACE 1984

SUMMARY OF PART II PACE

- Powers of Search and Seizure under the Criminal Justice and Public Order Act 1994

ARREST - THE POWER OF ARREST UNDER PART III PACE

- What constitutes an arrest ?
- European Convention on Human Rights 1950 Article 5(2)
- Arrest under warrant

ARRESTABLE OFFENCE s24 PACE 1984

GENERAL ARREST CONDITIONS. s25 PACE 1984

- Arrest under Public Order & Criminal Justice Act 1994
- Giving Reasons For The Arrest s28 PACE 1984
- Voluntary Attendance at a Police Station s29 PACE 1984
- Procedure following Arrest. S30 PACE 1984
- Search upon arrest s32 PACE 1984

PART IV DETENTION PACE 1984

- Inside the Police Station. S35 PACE 1984
- Summary Police & Criminal Evidence Act 1984
- Criminal Justice and Police Act 2001 Powers of seizure
- Terrorism Act 2000 : *Powers of arrest, search, &c.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW

POLICE POWERS OF STOP, SEARCH AND SEIZURE

In relation to the following, in order to answer problems questions, you should be able to identify the legal authority for applicable rules, both statutory and case law.

- 1 In what circumstances can a policeman stop and question a citizen? Consider in particular
 - a) Where a stop may occur
 - b) What policeman can stop someone for
 - c) What criteria apply to a stop – namely reasonable suspicion – meaning and of what?
 - d) What things a policeman must do to ensure the stop is lawful
 - e) Any special rules that apply to vehicles.
- 2 Is a citizen obliged to answer a policeman's questions? What consequences might arise from a failure to answer questions?
- 3 In what circumstances can a policeman search a citizen? including
 - a) Where a search can occur
 - b) What policeman can search citizens for
 - c) What criteria apply to a public search
 - d) What limitations apply to searches in public
- 4 In what circumstances can a policeman enter premises to conduct a search?
- 5 In what circumstances can a policeman seize property?
- 6 What remedies (if any) are available to a citizen where a policeman does any of the following, namely : - stops, searches a citizen, enters his property and seizes property without lawful authority?
- 7 What can the police do (if anything) with evidence obtained by unlawful means?

POLICE POWERS OF ARREST

In relation to the following, in order to answer problems questions, you should be able to identify the legal authority for applicable rules, both statutory and case law.

- 1 In what circumstances can a policeman arrest a person with a warrant?
- 2 In what circumstances can a policeman arrest a person for an arrestable offence and what is an arrestable offence?
- 3 In what circumstances can a policeman arrest a person for non-arrestable offences and what is a non-arrestable offence?
- 4 What amounts to an arrest?
- 5 What amounts to a lawful arrest?
- 6 What can and or should a PC do with an arrested person following an arrest?
- 7 How long can the police detain an arrested citizen and what procedures have to be followed? What else are the police entitled to do in order question the arrested citizen and obtain further evidence and what limitations are placed upon police conduct during the evidence gathering / detention process?
- 8 What, if any, are the consequences of an unlawful arrest with particular reference to pursuing charges against the citizen so arrested?

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ANALYTICAL SEQUENCE FOR STOP SEARCH SEIZURE AND ARREST PROBLEMS

GENERAL PRINCIPALS

- Freedom to do anything not prescribed by law
- Unlawful interference with the person and property – amounts to the torts of assault, battery, false imprisonment, trespass to the person / property and criminal offences of assault / grievous bodily harm etc under *Offences Against the Persons Act 1861*
- Public remedy – habeas corpus – to gain release from false imprisonment
- Citizen may use reasonable force to resist unlawful interference
- The authorities require a statutory / common law power to enable them to interfere with a person or their property : Most powers require “Reasonable Suspicion” : *Castorina v Chief Constable of Surrey* : *Monaghan v Corbert*.
- Unlawful actions : resisting lawful arrest : offences of obstructing or assaulting an officer in the lawful execution of his duty – *s89 Police Act 1996* : : *Kenlin v Gardiner* : *Donnelly v Jackman* : *Benley v Brudzinski*.

STOP – LEGALITY : s1-4 PACE 1984

- Location *s1(1) PACE* – excludes private land unless non-resident or trespasser – *s1(4) PACE*
- Vehicles *s1(5) PACE* – *s163 Road Traffic Act 1988* – permits random stop but search requires suspicion.
- Anticipation of violence *s60 CJPO Act 1994* weapons – dangerous instruments – no suspicion required – anyone in a specified place for 24 hours.
- Terrorism – *s13A Prevention of Terrorism Act 1989* – anyone – specified place 28 days.
- Purpose of stop – criteria - reasonable suspicion *s1(3) PACE* : *King v Gardner* : *Daniel v Morrison* + *s66 PACE / Annex B Code of Practice*
- Compliance with formalities – uniform – explanation – written notice *s2 PACE*

SEARCH – LEGALITY : s1-4 PACE 1984

- Location *s1(1)(a)(b) s1(2) PACE*
- Power of seizure *s1(6) PACE*
- Purpose – criteria – reasonable suspicion – what potential offences covered – stolen goods – prohibited articles *s1(7) PACE* – offences see *s1(8) PACE* – offence weapons *s1(9) PACE*
- Extent of search – formalities – conduct of search *s2 PACE*

SEIZURE – LEGALITY : s1(6) PACE

- What can be seized *s1(6) PACE*
- Compliance with procedures
- Records *s3 PACE*

ROAD CHECKS *s4 PACE*

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ENTRY UNDER WARRANT *s8 & s15 PACE*

- Procedures *s15 PACE Robson v Hallet : Davis v Lisle : Entick v Carrington : Thomas v Sawkins : Elias v Pasmore : Chic Fashions : Ghani v Jones.*

ENTRY WITHOUT WARRANT *Part II PACE & Schedule 1.*

- Purpose of entry *s17(1)(b)(c)(d)(e) PACE* – arrest – saving life or limb – preventing damage
- Formalities *s17(2) PACE* reasonable grounds for believing – uniform, *17(3)*
- Extent of Search *s17(2) PACE* - – limited territorial scope – power to exercised reasonably *s17(4)*

ENTRY POST ARREST *s18 PACE*

- Limited to arrestable offences : *s18(1) PACE*
- Grounds – reasonable suspicion of evidence of that or related arrestable offences *s18(1) PACE*
- Can seize anything for which he is allowed to search *s18(2) PACE*
- Scope of search limited by reasonableness test *s18(3) PACE*
- Requires authorisation in writing *s18(4) PACE* unless post arrest search in presence of arrested person *s18(5) PACE*

POWER OF SEIZURE *s19 PACE*

- Constable lawfully on property may seize articles *s19(1) PACE*
- Anything – reasonable grounds for believing obtained by offence or necessary to prevent destruction / concealment *s19(2) PACE*
- Anything if reasonable grounds for believing evidence of an offence – necessary to prevent concealment / destruction *s19(3) PACE*
- Opening up computers *s19(4) PACE*
- Exception for privileged material *s19(5) PACE*

RETENSION OF SEIZED PROPERTY *s21 PACE*

- Provide a written record to owner *s21(1) PACE*
- Within a reasonable time *s21(2) PACE*
- Application by citizen for supervised access to seized goods *s21(3) PACE*
- Photographic evidence and access thereto *s21(4)-(8) PACE*

ARREST UNDER WARRANT *s16 PACE*

- Exercisable by any constable *s16(1) PACE*
- Can authorise others to accompany a constable *s16(2) PACE*
- Warrants only last a month *s16(3) PACE*
- Entry at a reasonable hour – unless necessary to prevent frustration of purpose *s16(4) PACE*
- Procedures *s16(5) –(9) PACE*

CONSTITUTIONAL AND ADMINISTRATIVE LAW

ARRESTABLE OFFENCES : s24 PACE 1984

- Powers – relevant offences *s24(1) PACE* – Penalty fixed by law or 5 years + Jail
- Cohate offences – attempt, aid, abet, incite etc *s21(3) PACE*
- Arrest anyone committing or reasonable believed to be committing an offence *s21(4) PACE*
- Arrest anyone guilty of /reasonably suspected - if an offence committed *s21(5) PACE*
- Reasonable suspicion – Constable anyone reasonably suspected of *s21(6) PACE*
- Constable - Anyone about to commit or suspected of being about to commit *s21(7) PACE*

GENERAL ARREST CONDITIONS : s25 PACE 1984

- Purpose – any offence – reasonable grounds for believing summons impracticable *s25(1) PACE*
- Relevant person if the person suspected by constable *s25(2) PACE*
- General arrest conditions *s25(3) PACE* a) name unknown b) not believed c) address unsatisfactory d) necessary to prevent injury – loss or damage to property – public decency – obstruction to highway

INFORMATION TO BE GIVEN ON ARREST s28 PACE

- Must be informed of reason for arrest (but not the source of information
- and of the fact of arrest
- Unless not practicable

ARREST AWAY FROM A STATION s30 PACE

- Must be taken to nearest station
- As soon as possible
- But may go to another place to search first

ARREST FOR FURTHER OFFENCES s31 PACE

SEARCH UPON ARREST 32 PACE

WORKSHOP 2

POLICE POWERS OF STOP, SEARCH, SEIZURE & ARREST

- 1 P.C. Hasty was sent to the Glynfelin housing estate, a burglary black spot, to check out a report of suspicious goings on involving a young man in a light coloured jacket. When P.C. Hasty got to Elmsmer Drive, a part of the estate, he spotted Lovelorn, a young man in a beige jacket, standing in the street peering into the window of No.21. Lovelorn was trying to attract the attention of his girlfriend, who lived there, without disturbing her parents.

P.C. Hasty approached Lovelorn and asked him 'What are you doing ?' Lovelorn said 'Mind your own business' and started to walk away. P.C. Hasty placed his hand on Lovelorn's shoulder but Lovelorn pushed past him dislodging P.C. Hasty's glasses. P.C. Hasty grabbed hold of Lovelorn in order to restrain him. He searched the pockets of the jacket and discovered a key ring with a large bunch of keys. He also discovered a student card with a photograph from which he was able to learn that Lovelorn lived at No.23, Elmsmer Drive. He said to Lovelorn 'Come with me'. Lovelorn asked 'Does this mean I'm under arrest?' to which P.C. Hasty replied 'What does it look like?'

P.C. Hasty then took Lovelorn to No.23 and insisted on searching it, against Lovelorn's will. He found a C.B.Radio which operated on an illegal frequency and several pamphlets by the '*Destroy Democracy Organisation*' advocating terrorism. P.C. Hasty seized the radio and the magazines and took Lovelorn to the police station.

Advise Lovelorn to the legality of the events prior to the arrival at the police station.

- 2 Two plainclothes police officers, Nod and Plod, are conducting house to house inquiries in pursuit of a suspected murderer. They call at Quelch's house, but on knocking receive no answer. Hearing the sound of gun shots inside the house, Nod and Plod break down the door and discover Quelch and a neighbour, Raymond, watching a 'western' on T.V. Raymond bears a resemblance to the wanted man, and Nod immediately seizes him saying "Murdering swine - you're the one we want". Raymond resists the seizure but is eventually carried off and transported to the police station. Plod returns to search Quelch's house and despite Quelch's protests ransacks the house and eventually takes away a quantity of magazines published by an extremist organisation, Quelch's address book and a T.V. set for which Quelch has been unable to produce either a receipt or a licence. Raymond is subsequently charged with assaulting the police in the execution of their duty.

Advise Quelch and Raymond.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

LECTURES : WEEKS 4 & 5

FREEDOM OF EXPRESSION

INTRODUCTION

- Accountability, Democracy, Freedom of Speech and the Media.

THE RIGHT TO FREE SPEECH

- The Universal Declaration of Human Rights Articles 18 and 19 : UN Charter
- European Convention on Human Rights Articles 10
- Article 13 : American Convention on Human Rights 1969 - Costa Rica

LIBERTY OF THE PRESS / MEDIA

- The Theatre.
- Video
- Blasphemy
- Obscene Publications and Pornography
- Conspiracy to corrupt public morals.
- Conclusions

STATE INTERESTS AND FREEDOM – NATIONAL SECURITY

- Security and Censorship - the System of D Notices.
- Censorship and the Gulf War (No1)
- Media censorship of the I.R.A
- Offences against the Crown & Government
- The Frank's Committee of Inquiry 1972 and Unauthorised disclosure
- Official Secrets
- Sedition.
- Incitement to Mutiny & Disaffection
- Offences against the Public Peace & morals
- Blasphemy
- Incitement to Racial Hatred
- s70 Race Relations Act 1976.
- Public Order Act 1986 Part III s17-24
- Offences against Public Justice
- Contempt of Court Act 1981.
- Criminal Justice and Public Order Act 1994

SAMPLE ESSAY PLAN

'I might not agree with what you say, but I would defend to the last your right to say it.' To what extent, if at all, does this statement reflect the attitude of the British Legal System to Freedom of Speech?

KEY WORDS :-The "*British Legal System*" in relation to the "*Defence*" of "*Freedom of Speech*."
"Reflect."

Identify key issues	Discussion of the extent to which the British Legal System guarantees / protects Freedom of Speech.
Definition	Meaning of Freedom of Speech
Purpose	Rationale for Freedom of Speech – right to say things in public which hold the government to account – foundation stone of democracy. An open society is a prerequisite of trust by a people in its government.
Describe Current System	Contrast between freedom of speech (absence of constraints) and legal right to a public platform.
Limitations	Limitations on the freedom to say things which unlawfully harm or otherwise discriminate against others. Limitations on the freedom to say things likely to incite unrest and lead to social disturbances. Limitations on the freedom to say things which might harm society.
Evaluation	What special interests and sectors deserve protection? E.g. race, religion, creed, minorities, children and the vulnerable etc – can political correctness be taken too far? Is immorality a valid candidate for censorship? and the broader interests of a safe, open representative society.
National Security State Secrets	Official Secrets – should not be published where they give help and assistance to the enemies of the State. Consider whether the classification system is too restrictive What defences are there to disclosure in the national interest – defence of the whistleblower.
Conclusions	Evaluation of the extent, of at all, that Constitutional Law strikes the balance between freedom of speech / protest and the broader interests of a safe, open representative society.

This is only a sample : there are many ways of tackling such an essay, but any plan should be structured, involving definitions, rationale, description and evaluation.

CONSTITUTIONAL AND ADMINISTRATIVE LAW
FREEDOM OF ASSEMBLY AND PUBLIC ORDER
POLICE POWERS

STATUTORY CONTROL OF PUBLIC MEETINGS

- The Tumultuous Petitioning Act 1661.
- s51(1) Police Act 1964.
- Public Meetings Act 1908
- Public Order Act 1936.

PUBLIC MEETINGS AT COMMON LAW

MEETINGS IN PUBLIC PLACES

- s137 Highways Act 1980

CONTROL OF PUBLIC MEETINGS AND PROCESSIONS

- Public Order Act 1936
- Public Nuisance
- The Tort of Public Nuisance.
- Breach of the peace and power of arrest.
- The prevention and dispersal of meetings.
- Racial Hatred and public meetings.
- Public Order Act 1986
- Criminal Justice & Public Order Act 1994

PUBLIC ORDER AND TRESPASS

Anti-social Behaviour Act 2003

Racially-aggravated offences: Crime and Disorder Act 1998

CONSTITUTIONAL AND ADMINISTRATIVE LAW

PROBLEM SOLVING : FREEDOM OF ASSOCIATION AND ASSEMBLY

In order to answer problem questions, you should be able to identify the legal authority for applicable rules, both statutory and case law in relation to the following.

- The conditions that apply to organisations wishing to hold protest rallies and marches.
- The implications of failing to comply with such conditions
- The powers available to the police in relation to protest rallies and marches.
- The criteria that apply to the exercise of such power
- The consequences of failing to comply with police instructions/ orders.
- The powers open to the police to prevent obstruction of the highway by protestors.
- The criteria that apply to the exercise of such preventative powers.
- Special rules that apply to football supporters
- Rules governing interference with (*trespass on*) private property by protestors to prevent lawful activities (such as building airports – motorways – opencast mining and commercial activities involving animal testing – husbandry – animal products).
- Rules governing strikes and picketing.
- Restrictions on the conduct of protesters in relation to uniforms and political allegiance.
- Rules governing unlawful interference with lawful protests.
- Restrictions governing the conduct of groups of citizens in public likely to cause offence to others.
- Restrictions governing the conduct of groups of citizens in public likely to result in violence to others.
- Restrictions governing the conduct of groups of citizens in public likely to cause intimidation to others.
- Restrictions governing the conduct of groups of citizens in public that involves harassment of others
- Restrictions governing the conduct of groups of citizens in public that involves threats of violence
- Restrictions governing the conduct of groups of citizens in public that involves threats of discrimination.
- Restrictions governing the conduct of groups of citizens in public that involves trespass on land, including unlawful raves.
- Note the powers available to the authorities in relation to 8-19 – and the criteria that apply to the exercise of such powers.
- Racial Hatred – Special Provisions.

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ANALYTICAL SEQUENCE FOR ASSEMBLY PROBLEMS

NOTICE REQUIREMENTS s11 POA 1986

- 6 day advance notice by organisers, for demonstrations for and against views, causes events
- Not applicable to funerals and customary events
- Date, time, route, organiser's address
- Failure an offence

CONDITIONS ON PUBLIC PROCESSIONS s12 POA 1986

- By Senior Police Officer s12(2) – (3) in writing
- Reasonable belief – disorder, damage, disruption or intimidation
- Purpose – to prevent the problem
- May specify route
- Failure to comply – offence unless beyond control s12(4) – Fine s12(9)
- Offence applies to all present 12(5)
- Incitement 12(6) – Imprisonment 1 year s12(10)
- Uniformed PC may arrest – while offence on-going s12(7)

PROHIBITING PROCESSIONS s13 POA 1986

- Council ban on procession for 3 months
- Can be revoked later.
- Needs to be advertised in order to be effective

CONDITIONS ON ASSEMBLIES s14 POA 1986

- By Senior Police Officer s14(2) – (3) in writing
- Reasonable belief – disorder, damage, disruption or intimidation
- Purpose – to prevent the problem
- May specify location and limit numbers/duration
- Failure to comply – offence - Fine s14(9)
- Defence unless beyond control s14(4)
- Offence applies to all present 12(5)
- Incitement 12(6) – Imprisonment 1 year s14(10)
- Uniformed PC may arrest – while offence on-going s14(7)

STOP SEARCH / VIOLENCE s60 CJPO 1994

- Power to stop / search persons / vehicles
- for weapons
- for up to 48 hours -

REMOVAL OF DISGUISES s60AA CJPO 1994

- Uniformed PC can order removal of / seize an item
- intended to hide a person's identity
- Authority to do so limited to 24 hours.

PROHIBITING TRESPASSORY ASSEMBLIES s14A POA 1986

- Council ban on TAs where owner does not consent
- Duration 4 days –
- Scope 5 mile radius
- 20 or more people

TRESPASSORY ASSEMBLIES OFFENCES s14B POA 1986

- Arrestable offence to organise trespassory assembly

STOPPING TRESPASSORY ASSEMBLIES s14C POA 1986

- Police can stop people going to a Trespassory Assembly
- Power of arrest – offence to ignore order.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

REMOVING TRESPASSERS s61 CJPO 1994

- 2 or more persons – intention to reside – trespassing –
- damage or threats, abuse, insults to occupier
- or has 6 or more vehicles
- Original entry may not have been trespass
- Offence – imprisonment / fine – arrestable
- Defence – not trespassing – reasonable excuse for not leaving asp.
- Power to seize vehicles.

AGGRAVATED TRESPASS s68/69 CJPO 1994

- Trespass – intimidation – obstruction – disruption
- Power to evict.

DISPERSAL OF GROUPS ASBA Act 2003

- 2 or more persons –
- intimidation, harassment, alarm, distress – public place –
- persistent in a locality
- significant Anti-Social Behaviour
- Power to disperse non locals
- Power to send home unsupervised under 16s. outside 9pm –6am.
- Arrestable offence – uniformed PC

PUBLIC NUISANCE

- Lowdens v Heavenny
- Beatty v Lenister
- Beatty v Gillbanks
- R v Chief Cont. Devon ex pte CEGB
- Humphries v Connor
- O’Kelly v Harvey
- Wise v Dunning

BREACH OF PEACE

- R v Howell
- Albert v Lavin
- S25 PACE 1984
- S28 Town Police Causes Act 1847 shouting and swearing in public

OBSTRUCTION OF THE HIGHWAYS

- S137 Highways Act 1980
- Arrowsmith v Jenkins
- Burden v Rigler
- R v Dubbins
- R v Clark
- Homer v Cadman
- Cooper v MPC
- Hirst v C.Onst. West Yorkshire 1986
- Hubbard v Pitt
- R v Moule

TUMULTUOUS PETITIONING ACT 1661.

- Max 10 people permitted to present a petition.
- To Queen or Parliament
- Max 20 people allowed to collect signatures.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

PUBLIC MEETINGS ACT 1908

- Offence to disrupt a meeting
- Offence to incite disruption
- PC may require name and address – offence to refuse – requires request

PUBLIC ORDER ACT 1936.

- Offence to wear a uniform = political allegiance
- Arrestable under s7 POA 1936
- Usurping role of police s2 – offence
- O'Moran v DPP
- Jordan v Burgoyne
- Brutus v Cozens

RIOT s1 PUBLIC ORDER ACT 1986

- 12 or more persons
- threaten unlawful violence – common purpose
- if a reasonable person may be fearful
- by any one individual
- no one need actually be in fear
- 10 years

VIOLENT DISORDER s2 POA 1986

- 3 or more persons
- threaten unlawful violence
- reasonable person may be fearful
- by any one individual at any time
- no one need actually be in fear
- private or public place
- 5 years

AFFRAY s3 POA 1986

- 1 person
- threatens unlawful violence
- reasonable person may be fearful
- needs actions not merely words
- no one need actually be in fear
- public or private place
- arrestable
- 3 years

FEAR / PROVOCATION OF VIOLENCE s4 POA 1986

- 1 person
- threatening abusive insulting words or placards
- with intent to cause person to fear violence or
- provokes violent response
- Public or private place (excluding placards inside)
- Arrestable
- 6 months

RACIALLY AGGRAVATED PUBLIC ORDER s31 CDA 1998

- s4, 4A & 5 POA 1986 + racially aggravated
- Arrestable if warned and continues
- But no warning needed under s4????
- Penalty 6 months same as s4 ???
- No aggravated penalty?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

RACIALLY AGGRAVATED HARASSMENT s32 CDA 1998

- S2 & s4 PHA 1997 + racially / religiously aggravated
- S2 2 years (6months summary)
- S4 7 years (6 months summary)

INTENTIONAL HARASSMENT s4A POA 1986

- 1 person
- intent to cause harassment by
- threatening, abusive words / disorderly behaviour
- causing harassment alarm or distress
- Public / private (excluding placards inside)
- Defence if inside – not realise visible outside
- Arrestable
- 6 months

HARASSMENT s5 POA 1986

- 1 person
- threatening abusive insulting words disorderly behaviour – placards
- within hearing or sight
- public / private place (excluding outsiders if not known outsiders affected)
- defence – no reason to believe anyone within hearing
- reasonable conduct
- arrestable post warning if continues
- fine – level 3

PROHIBITION OF HARASSMENT s1 &2 PHA 1997

- Offence to knowingly harass
- Objective test
- Defence of lawful authority
- Fine – or 6 months
- Civil tort – s3

PUTTING PEOPLE IN FEAR OF VIOLENCE s4 PHA 1997

- Offence to knowingly put another in fear of violence twice.
- Test – objective
- Defence – lawful authority

MENS REA s6 POA 1986

- Riot requires awareness that conduct is violent or threatening
- Violent disorder and affray requires intention to threaten violence or awareness
- S4 requires intent to be threatening abusive or insulting or awareness
- S5 – intoxication has no impact on awareness unless involuntary intoxication

RACIAL HATRED PART III POA 1986

- MEANING OF RACIAL HATRED – s17 POA 1986
- USE OF WORDS BEHAVIOUR DISPLAY WRITTEN MATERIAL s18 POA 1986
- PUBLISHING DISTRIBUTING WRITTEN MATERIAL s19 POA 1986
- PUBLIC PERFORMANCE OF PLAY s20 POA 1986
- DISTRIBUTING SHOWING OR PLAYING RECORDING s21 POA 1986
- BROADCASTING s22 POA 1986
- POSSESSION RACIALLY INFLAMMATORY MATERIAL s23 POA 1986
- RACIAL OR RELIGIOUS HATRED

SERIOUS ORGANISED CRIME BILL 2004/2005 Schedule 10

- Racial Hatred to be replaced in Part III POA 1986 by RACIAL AND RELIGIOUS HATRED
- Test : likeliness of causing offence to a victim – more sensitive a victim more likely an offence.

WORKSHOP 3

FREEDOM OF ASSOCIATION AND ASSEMBLY

- 1 John and David are leading members of the organisation "More Money for Students". Wishing to promote their organisation they decide to hold a protest march through the streets of Cardiff culminating in a massive rally outside the City Hall.

Anxious to avoid any trouble with the rival organisation "Make Students Work", who had caused fights at previous meetings, John and David did not publicise the march and did not inform the police of the timing or proposed route of the march. Instead news of the march was passed among supporters by word of mouth.

On the following Saturday morning the supporters of the M.M.S. campaign congregated at their pre-arranged spot and started to march through the city. The police stopped the march before it reached the City Hall and asked David to lead it to a nearby park instead. He refused and led the marchers to the City Hall as originally planned.

Once there David started to address the crowd. As the crowd was blocking the road the police again asked David to move to the nearby park. Once again he refused, continued to speak, and was arrested.

John then led the crowd to the park and standing just outside the gates he started to address his supporters. Five minutes later fifty supporters of the M.S.W. campaign arrived and a serious fight ensued during which several people were injured. The police were forced to intervene and John was arrested.

Michael, the leader of the M.S.W. campaign then led his supporters back through the city. They used abusive language to several onlookers and exhibited threatening behaviour towards several old people, one of whom was taken ill as a result of the incident. Michael was arrested.

Advise John, David and Michael.

- 2 The Immigrant Rights Action Group in Melchester organised a march which was to be a preliminary to its public meeting outside the Town Hall.

The meeting was advertised locally. The marchers wore national costumes and carried protest banners. Khan, a radical member of the group arranged for his and some other banners to be highly insulting to English people. George a local resident was incensed by the banners and attacked some of the marchers. The police restored order and arrested George and Khan.

When the march reached the Town Hall a policeman instructed Javed, the action group leader, not to hold a meeting there but despite this advice Javed went ahead and was arrested. The police then dispersed the group.

Consider the legal liability, if any, of Khan, George and Javed.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

LECTURES : WEEKS 6 & 7

ADMINISTRATIVE LAW / PUBLIC LAW / JUDICIAL REVIEW

INTRODUCTION

- Judicial Review – scope of topic
- Lord Greene : Wednesbury Reasonableness
- Principal aspects of Judicial Review : Grounds, Remedies and Practice

ADMINISTRATIVE ACTION AND THE CITIZEN

- Civil Law
- Public Law

CATEGORIES OF ULTRA VIRES

- Introduction
- Irrationality / 'Wednesbury' unreasonableness.
- Procedural Impropriety
- Proportionality – a new European Community test.
- Ultra Vires and The Royal Prerogative.
- Ultra Vires, Statutory Powers and Discretionary Powers.
- Unreasonable use of powers
- Abuse of Powers
- Ouster Clauses and Time Bars and s14 Tribunals & Inquiries Act

NATURAL JUSTICE AND DUE PROCESS

- Bias : "*Nemo iudex in causa sua*
- Right to a hearing : "*Audi alteram partem.*"
- Fairness and natural justice
- Delegation - *Delegatus non potest delegare* and Estoppel
- Error of law on the face of the record
- Judicial Review and the Human Rights Act 1998

PUBLIC AND PRIVATE REMEDIES COMPARED AND CONTRASTED

- Private Law
 - Damages
 - Specific Performance
 - Injunctions
 - Declaration
- Public Law remedies
 - Prohibition :
 - Quashing Order (Certiorari) ;
 - Enforcement Order (Mandamus).
- Reform of Judicial Review

AVAILABILITY OF JUDICIAL REVIEW : PROCEDURAL REQUIREMENTS

- Order 53 Supreme Court Rules : CPR 54 1998 : and s31 Supreme Court Act 1981
- Ex Parte
- Public and private law.
- Locus Standii.
- An arguable case.
- Time Limits.
- The Woolf Reforms and the Civil Procedure Rules 1998.

WORKSHOP 4

JUDICIAL REVIEW – PRACTICE AND PROCEDURE

- 1) Discuss the criteria adopted by the courts in relation to applications for judicial review.
- 2) Identify the principal grounds (categories) for judicial review
- 3) Outline the principal remedies available in Judicial Review
- 4) Discuss the following :
 - (a) Foxshire Local Authority refused to re-register Hilda as a childminder because she refused to purchase toys and books which reflect a wide range of racial types and because she is a smoker. Hilda feels that such purchases are not necessary since here staff are drawn from disparate ethnic groups and doesn't understand what smoking has to do with her application.
 - (b) Gareth, a teacher, is dismissed by Foxshire High School. A year earlier he was told that his performance was unsatisfactory by a Ministry of Education assessor. The purpose of the assessment system was to help teachers improve their performance. The results should have been kept private but the school governors were given them. The governors then informed him that his position was under review. At the governor's annual meeting the decision was made to dismiss him. Gareth was not invited to attend. He has not been given any reasons for the decision.
 - (c) Peter applied to Foxshire LA for permission to use his large house for business purposes. His application was refused. Peter has just discovered that the chairman of the Local Authority Planning Committee is closely related to a business rival of his.
 - (d) Balzac (a British citizen and a full British passport holder) is detained at Heathrow airport and refused entry to Britain because he is not a British citizen.
 - (e) Foxshire LA refused to licence Delia as a taxi driver because the vehicle that she intends to use is not on the Authority's very limited list of approved vehicle types. This list is restricted to vehicles which are regarded by the Authority as being very safe. Delia's husband Fred runs a Volvo dealership in the area and he wishes to challenge an exclusion of such vehicles from the list.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 8 : LECTURE

SOVEREIGNTY OF PARLIAMENT

- **Definitions of sovereignty** : A Sovereign is "The supreme ruler of the state".
Austin : *"If a determinate human superior, not in a habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent"*.
Bryce : *"The person (or body) to whose directions the law attributes legal force, the person in whom resides as of right the ultimate power either of laying down general rules or of issuing isolated rules or commands whose authority is that of the law itself"*.
- **The Doctrine of Sovereignty of Parliament**
"Parliament is the supreme power in the state and as such possesses unlimited legal power."
Dicey : *"The principle of Parliamentary Sovereignty means neither more nor less than this, namely that Parliament has, under the English Constitution, the right to make or unmake any law whatever; and further that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament"*.
De Smith : *"The Queen in Parliament is competent, according to U.K. law, to make or unmake any law whatsoever on any matter whatsoever; and no U.K court is competent to question the validity of an Act of Parliament. Every other law-making body within the realm either derives its authority from Parliament or exercises it at the sufferance of Parliament; it cannot be superior to or even coordinate with, but must be subordinate to Parliament"*.
- **Rationale for Parliamentary Sovereignty** : Democratic / representative Government. Parliament as the representative of the people is mandated to make law, by the people for the people. Therefore it is the electorate that makes the law of the people.
- **Legislative Procedure**
 - Bill introduced in either House of Commons or House of Lords :
 - Government or Private Members Bills.
 - Three readings. Principal debate and amendments occur during second reading. If passed by both houses – followed by royal assent.
 - Money bills fast track 1 month :
 - Parliament Act 1911 / 1948 allows original bill to proceed to royal assent at end of delay period, if speaker of House of Commons certifies.
- **Delegated Legislation. Advantages & Disadvantages** : Controls
 - Statutory Instruments – presented and scrutinized by Parliament
 - Orders in Council (Privy Council)
 - Regulations and directives of the European Union
 - Scottish Parliament, Welsh / Northern Ireland Assemblies
 - Local Authorities.
- **Functions of Legislation.**
 - Declaratory
 - Tax – redistribution
 - Social Control – criminal law
 - Regulatory – private rights
 - Social policy – public law

CONSTITUTIONAL AND ADMINISTRATIVE LAW

ANALYSIS OF DOCTRINE OF SOVEREIGNTY OF PARLIAMENT

- 1). **That Parliament is competent to legislate on any matter whatsoever, including matters regarding the Constitution of Parliament itself.**
 - Can the U.K. Parliament make law for independent nations?
 - Obligations of UK Government under international treaties – *Morteson v Peters*.
 - Practical limitations on Parliamentary Sovereignty
 - Political limitations on Parliamentary Sovereignty
 - Moral limitations on the Sovereignty of Parliament.
 - Retrospective Legislation.
 - Religious, ethical, natural law – Blackstone & Coke.
- 2). **That Parliament is the sole and Supreme Law maker in the land** and as such all other law making bodies derive their legislative powers from Parliament. Parliament is not subject to the law making powers of external bodies.
 - The Role of the Courts in Law Making.
 - Delegated Legislation.
 - Statutory Instruments and Local Authorities
 - Scottish Parliament, Welsh and Northern Ireland Assemblies
 - The European Union – as a source of law.
 - The impact of the European Convention on Human Rights as source of law.
- 3). **That no court can question the legislative competence of Parliament.**
 - Can the Courts question Acts of Parliament ?
 - Statutory Interpretation – ostensibly clarifies intention of Parliament.
 - European Community Law – *Factortame*
 - Impact of Luxembourg (ECJ) as interpreter of European Law.
 - European Convention on Human Rights – interpretations of law arising out of Strasbourg.
 - Human Rights Act – impact of declarations of incompatibility on Acts of Parliament : *A v S.S. for Home Office 2004* – Bellmarsh Prison internees.
- 4). **That each Parliament is born free and cannot be bound by prior legislative provisions of earlier Parliaments.**
 - Each Parliament is born free and cannot be bound by earlier Parliaments.
 - Act of Union – Scotland : Ireland
 - Lord Advocate of Scotland.
 - The Doctrines of Express Repeal and Implied Repeal.
 - *Vauxhall Estates*
 - *Re Ellensborough*
 - Impact of European Law on doctrine of express and implied repeal.
 - Human Rights Act – implied repeal of prior legislation.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

CASE LAW : JUDICIAL PRECEDENT : THE DECLARATORY THEORY OF LAW

- Judicial Precedent – The Justifying Rationale – discovers and declares what the common law has always held
- How Judicial Precedent Works.
- Ratio Decidendi : The legal rule / reason behind a decision.

JUDICIAL PRECEDENT

- Pre-conditions binding precedent
- Advantages and disadvantages of judicial precedent.
- The binding element in a law report. Distinguish Ratio Decidendi from Obiter Dicta.
- Circumstances where a precedent is NOT binding.

STATUTORY INTERPRETATION AND SOVEREIGNTY

- Judicial aids to ascertain Parliament's intentions.
 - 1). The Literal Rule.
 - 2). The Golden Rule or purposive approaches.
 - 3). The Mischief Rule (The Rule in Heydon's Case).
- Subsidiary techniques used in Statutory Interpretation.
- Statutory Interpretation and Human Rights Act.
- Interpretation of EC Law.

DEVOLUTION AND THE SOVEREIGNTY OF PARLIAMENT

- **Introduction**
 - History
 - The concept of devolution
 - Definition
- **Wales**
 - Devolution Process
 - The National Assembly for Wales
 - The Committee Structure
 - The Executive Committee
 - Subject Committees
 - The Legislative Making Process
 - Primary Legislation: Assembly Process
 - Secondary Legislation: Assembly Process
 - Management of the Assembly's legislative business
 - The powers and responsibilities of the Assembly
 - The Role of the Secretary of State for Wales after Devolution
 - Key Figures in the Welsh Assembly
- **Scotland**
 - Devolution Process
 - The Scottish Parliament
 - Reserved matters
 - The main functions of the Scottish Parliament
 - The Scottish Executive
 - The role of the Secretary of State for Scotland after devolution
 - Key Figures in the Scottish Parliament
- **English Assemblies**

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 9 : LECTURE

SUPREMACY OF PARLIAMENT AND THE EUROPEAN UNION

General Introduction

- History of the EC
- Aims and Functions of the EC.
- Institutions of the E.C.
- Legal Framework of the E.C.

Relationship between the E.C. & the U.K.

- Scope of the E.C.'s Sovereign Power
- Sovereignty and the Single Currency
- Federalism and the European Union
- Incorporation of E.C. Law into the U.K. legal system
European Communities Act 1972
- The E.C. attitude to the enforceability of Community Law
- Conflicts between E.C. and U.K. Law
- Judicial Attitudes to the EC in the UK
- The effect of E.C. legislation
 - Treaties
 - Regulations
 - Directives
 - ECJ Decisions
- Non-compatibility / compliance and directives
- Unlawful Directives.
- Direct Effect and Indirect Effect : Treaty Obligations, Regulations and Directives
- European Terminology : Definitions
- Academic viewpoints on sovereignty and EC Law

SAMPLE ESSAY PLAN

'The Doctrine of Sovereignty of Parliament is a fundamental principle of the British constitution'. Discuss.

KEY WORDS :-The Doctrine of "*Sovereignty of Parliament*" is a "*fundamental*" principle of the "*British Constitution*". "*Discuss.*"

Identify key issues	Discussion of whether or not Sovereignty of Parliament in the UK exists and if so how important it is to the constitution
Definitions	Make any law
Parliamentary Sovereignty	Unmake any law
Four ingredients	Sole – supreme law maker
Dicey et al	Laws cannot be impeached by the courts
Purpose	Rationale of the Doctrine Law determines the rights and duties of a people so the power to make law is important Democracy – law is made by the people for the people Alternative – dictatorship
To make any law	Legal basis of sovereignty - cases
Evaluation	International law - cases Political constraints - Reality constraints - examples Ethical constraints - cases EU – ECHR - cases
To unmake any law	Express – cases
Evaluation	Implied repeal - cases EU law – ECHR - cases
Only Law maker	EU - cases
evaluation	ECHR - cases United Nations - examples
Role of courts	Precedent - cases
evaluation	Interpretation - cases EU law – ECHR - cases
Conclusions	Evaluate whether the doctrine works or not If not, conclusions If it does conclusions If it works in parts but not completely, evaluate the extent to which the parts that work safeguard democracy..

This is only a sample : there are many ways of tackling such an essay, but any plan should be structured, involving definitions, rationale, description and evaluation.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WORKSHOP

PARLIAMENTARY SOVEREIGNTY

- 1 Define the notion of Parliamentary Sovereignty and identify the rationale behind the concept.
- 2 To what extent, if at all, is it possible for Parliament to bind itself either legally or from a practical perspective?
- 3 Has the incorporation of the European Convention on Human Rights through the medium of the Human Rights Act reduced the significance of Parliamentary Sovereignty?
- 4 Does devolution devalue the sovereignty of parliament?
5. Consider whether or not entry into the European Community involves a rejection of the doctrine of parliamentary sovereignty.

SHORT ANSWER QUESTIONS

- 6 What do the following bodies do?
 - a) European Parliament
 - b) Council of Ministers
 - c) European Court of Justice
 - d) European Commission
- 7 Explain the following terms and provide examples
 - a) Directly applicable
 - b) European Regulation
 - c) European Directive
 - d) Harmonisation
 - e) Vertical Effect
 - f) Horizontal Effect
 - g) Subsidiarity
- 8 What are the following
 - a) The Treaty of Rome 1957
 - b) The Maastricht Treaty
 - c) The Treaty of European Union
 - d) The Amsterdam Treaty
 - e) The European Constitution
- 9 Discuss the following
 - a) Costa v E.N.E.L
 - b) S1 ECA 1972
 - c) S2 ECA 1972
 - d) S3 ECA 1972
 - e) Factortame 1-5

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 10 : LECTURE

COMPOSITION OF PARLIAMENT and THE ELECTORAL SYSTEM

INTRODUCTION

- Principal Constitutional Offices in the United Kingdom
- British Prime Ministers and British Governments 1721-2001

THE ELECTORAL SYSTEM

- Functions of Parliament
- General Propositions on Parliament

Elections and the House of Commons.

- The Boundaries Commission
- The first past the post ballot system
- Westminster Results 1945-2001
- Correlation between votes cast and seats won.

Alternative systems of voting

- Critical Mass and the General Election Results 1979-92
- Proportional Representation :
- Minorities under First Past the Post
- Democracy and First Past the Post
- Criticisms of Alternative Voting Systems
- Trends in voting 1974-2001 and turnout at elections 1945-2001
- Selection of candidates and de-selection
- Whose mandate is to be enforced ?
- Elections and information
- Finance of elections
- Access to information
- The Timing of Elections
- The Standard of M.P.s.
- Mandates and democracy
- Devolution
- The Scottish Parliament and Welsh Assembly Systems
- The European Community Electoral System

SAMPLE ESSAY PLAN

'The British electoral system in relation to Parliamentary elections is in need of reform'. Discuss.

KEY WORDS :-The "**British**" "**electoral system**" in relation to "**Parliamentary**" elections is in need of "**reform**". "**Discuss.**"

Identify key issues	Discussion of the need to reform parliamentary election system.
Definitions	What Parliament is What Parliament does (government, legislature and relation to judiciary) Who sits in parliament.
Purpose	Rationale for Elections (democracy – representative government - alternative methods e.g. dictatorship – evaluate importance of elections). Objective – Representative government of all the people “one man one vote” – equality.
Describe Current System	Set out how system works – constituencies – the ballot – first past post - who can vote – how the government is formed.
Evaluate the system.	How effective is the system at reflecting the wishes of the people? Statistical analysis from past elections – identify winners and losers. Do elections deliver a mandate? Does it enable effective choice? Who chooses the candidates? Do people value elections? Strengths of system – strong government Disadvantages – weakness of opposition to hold government to account if it fails to deliver on promises. Is an elected dictatorship satisfactory?
Alternative voting systems	List alternatives – explain how they work – with advantages and disadvantages – draw examples e.g. use in Wales, Scotland, EU, France, Israel, Italy, New-Zealand, Australia, USA etc Evaluate effectiveness of coalition government.
Conclusions	Demographic reasons for the use of particular processes – which would be best for Westminster.

This is only a sample : there are many ways of tackling such an essay, but any plan should be structured, involving definitions, rationale, description and evaluation.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 11 : LECTURE

COMPOSITION OF PARLIAMENT : THE HOUSE OF LORDS

- Introduction

- Analysis of Composition 1 May 2003

- Membership of the Lords prior to the Labour Reforms

- Political complexion

- Powers of the House of Lords

- The Power of delay

- Functions of the House of Lords

- Various ideas about reform.

- Ideas regarding its continued existence

- Proposals for reform.

- The Current State of Reform of The House of Lords.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

SAMPLE ESSAY PLAN

“The House of Lords was and remains anathema to democracy. Comment.”

KEY WORDS :- The *“House of Lords”* was and remains *“anathema”* to *“democracy”*. *“Comment”*

Identify key issues	Discussion of the relationship between the Houses of Commons and Lords, with respect to composition, functions and powers.
Background	Explain what the House of Lords is in relationship to the other component parts of Parliament with particular reference to the three main functions of executive, legislature and judiciary.
Democracy	Consider whether there is any rational basis for an upper house to act as a constraint upon the will of the people. Consider use of upper houses in other countries, in relation to composition, functions and powers.
Anathema	Discuss need for accountability and assess whether it is sufficient to rely on self-restraint and competence by the people’s representatives – anathema or sensible safeguard.
Composition	Past - Hereditary Present – Appointees – some residual hereditaries – outline reforms to date Future – potential reforms and problems to date in reform Evaluate
Functions	What is does What is should do – various committee reports. Evaluate
Powers	Delay Veto Parliament Acts – 1911 – 1948 – examples of use – legality – Hunting Act 2004 legal challenges – Judicial Review – Human Rights – Rule of Law versus enforceability in face of mass opposition – compare attitude of Labour to rule of law now and previously in relation to minor’s strike and the poll tax.
Conclusions	Is the answer to reform the House of Commons – or is an upper house needed – if so, <ul style="list-style-type: none">➤ What functions should it perform,➤ What powers are needed to fulfil these functions and➤ Who would be most suitable to perform these functions

This is only a sample : there are many ways of tackling such an essay, but any plan should be structured, involving definitions, rationale, description and evaluation.

WORKSHOP 6

THE ELECTORAL SYSTEM

- 1 Consider the proposition that the U.K. electoral system as a method of producing representative government suffers from curable defects.
- 2 Discuss the statement that our electoral system produces accountable but not representative governments.
- 3 Discuss and illustrate the following statement : *'If it is accepted that a democratic Parliament ought to represent as far as possible the preferences of the voters the British electoral system is probably the worst that could be devised.'*
- 4 Explain how the voting system for the European Union operates in the United Kingdom and how the voting systems for the Welsh Assembly and Scottish Parliament operate.
- 5 Explain the following terms
 - a) Proportional Representation
 - b) Single Transferable Votes
 - c) The List System
 - d) The Top-up System
 - e) The Electoral Commission

HOUSE OF LORDS

- 1 The House of Lords was and remains anathema to democracy. Comment.
- 2 Fundamental reform of the House of Lords was not desirable. Consider this proposition.
3. *"The key to any worthwhile reform of the Lords is no longer the question of its powers, even of its composition, but primarily of its true function."*
B.Crick 'The Reform of Parliament'.
Consider this proposition in the light of the proposals in the Jenkins report (1998) and what has since taken place.
- 4 How important, if at all, do you consider it to be to establish a distinct and separate Supreme Court in lieu of the House of Lords as the highest court in the land?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 12 : LECTURE

CONVENTIONS OF THE CONSTITUTION

- Definitions of Constitutional Conventions
- The function and purpose of conventions
- The Importance of Conventions
- Identification of and establishment of Constitutional Conventions
- How long does it take for a convention to become established?
- Distinguish between Constitutional Conventions and habit.
- The Distinction between Laws and Conventions
- Are all laws enforced or enforceable?
- Why are conventions obeyed?
- Will breach of a convention lead to a breach of law ?
- Other reasons why conventions be obeyed.
- The Consequences of breaching Conventions
- Are conventions uncertain and conversely are laws certain ?
- Codification, Sources of Laws and Constitutional Conventions
- Are Conventions flexible and laws rigid ?
- The Classification of Conventions
- How real are conventions?
- Are new controls needed to replace conventions?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 13 : LECTURE

THE RULE OF LAW

INTRODUCTION

- Exposition of the three inter-related Rules

RULE ONE

- What does it mean?
- What is the rationale for the existence of the rule?
- Is the objective of the rule desirable?
- Is the rule applicable to the modern constitution?
- If the rule is not applied, does this lead to problems and if so what solutions are required?

RULE TWO

- What does it mean?
- What is the rationale for the existence of the rule?
- Is the objective of the rule desirable?
- Is the rule applicable to the modern constitution?
- If the rule is not applied, does this lead to problems and if so what solutions are required?

RULE THREE

- What does it mean?
- What is the rationale for the existence of the rule?
- Is the objective of the rule desirable?
- Is the rule applicable to the modern constitution?
- If the rule is not applied, does this lead to problems and if so what solutions are required?

WHOSE LAW RULES ?

- The EC
- Public International Law

CONCLUSIONS

- Importance / significance of the Rule of Law today.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

THE SEPARATION OF POWERS

INTRODUCTION

- The Legislative function and the legislature
- The Executive Function and the Executive.
- The Judicial Function and the Judiciary.
- Origins of the Doctrine of Separation of Powers.
- Comparative study with other constitutions.
- To what extent does the Doctrine apply to the U.K.?

THE LEGISLATURE AND THE EXECUTIVE

- Personnel : Do the same persons or bodies form part of both the legislature and executive ?
- Control : Does the Legislature control or interfere with the Executive & vice versa ?
- Function : Do the Legislature and the Executive exercise each other functions ?

THE EXECUTIVE AND THE JUDICIARY

- Personnel : Do the same people participate in the Executive & the Judicial Functions ?
- Control : Does the executive control the judiciary or vice versa ?
- Function : Do the executive and the judiciary exercise each other's functions ?

THE JUDICIARY AND THE LEGISLATURE

- Personnel : Do the same persons or bodies form part of both the Judiciary and the Legislature. ?
- Control : Does the Judiciary control the legislature or vice versa ?
- Function Do the Legislature and the Judiciary exercise each other's functions ?
- Do the Judges make Law :?

EVALUATION

- The importance of the doctrine

REFORM : LORD CHANCELLOR DEPARTS?

- Questions about the doctrine.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WORKSHOP 7

CONSTITUTIONAL CONVENTIONS AND DOCTRINES

- 1 Explain the nature, purpose and importance of Constitutional Conventions.
- 2 How can you identify conventions and why are they obeyed ?
- 3 Constitutional conventions "*provide the flesh which clothes the dry bones of the law; they make the legal constitution work; they keep it in touch with the growth of ideas*".
Jennings '*The Law and the Constitution*'.
Consider this proposition.
- 4 "*A convention is a rule of political practice which is regarded as binding by those to whom it applies, but which is not a law as it will not be enforced by the courts or by the Houses of Parliament.*"
To what extent is the above comment of assistance in explaining the nature of a constitutional convention?
- 5 Consider the view that constitutional conventions are constitutional rules, which are not laws in the strict sense, which are obeyed because a breach of the rules would ultimately lead to a breach of the law and which are designed to control the use of discretionary power by the Crown.
- 6 What is meant by "*The Rule of Law*"? Consider its status, importance and implications in the UK with particular reference to the Sovereignty of Parliament.
- 7 To what extent, if at all, is the Separation of Powers a feature of the British Constitution and to what extent do you consider that it should be a feature of the UK Constitution?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 14 : LECTURE MINISTERIAL RESPONSIBILITY

The Westminster Model

- convention of individual ministerial responsibility
- Epitomises liberal democratic government post 1832. Reconciles
- executive accountability to Parliament and
- the Doctrine of the Rule of Law,
- underpinned by
- judicial supervision on the basis of 'ultra vires'.

Accountability and Democracy

"The difference between democracy and tyranny is not that in a democracy bad things don't happen. It is that in a democracy when they do happen, people are held to account" Tony Blair –British P.O.W.S. in Iraq – Jan 2004
Was this a slip of the tongue – for "people" should he have said "those responsible"?

Responsibility and Accountability

- 1). Individual ministerial responsibility for:-
 - a). the government department.
 - b). personal misbehaviour.
- 2). The collective responsibility of cabinet ministers.
 - Ministerial Accountability is a convention - no statutory force.
 - No universal agreement re terms of accountability
 - No independent authority with power to judge

Barnett (1997) ministerial responsibility is central to the constitution : plays a fundamental role in relationship between Executive and Parliament.

Definitions of Ministerial Responsibility

House of Commons Public Service Committee: *"There have always been elements of ambiguity and confusion in the convention of individual ministerial responsibility . . . There is no comprehensive or authoritative statement of it, which has binding force, and it cannot be enforced by legal sanctions. As a result, the way in which it is used in practice tends to be variable and inconsistent"* .

Marshall and Moodie (1971) *"Ministers are responsible for the general conduct of Government, including the exercise of many powers legally vested in the Monarch; and ultimately through Parliament and parties, to the electorate"*

Leyland and Woods. The classical (perhaps-mythical) doctrine of ministerial responsibility can be summarised in its essence as: *" . . . The minister takes all the praise and all the blame"*.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Legal Responsibility

Ministers are personally liable under civil law - **Dyson v A.G.**

Dicey : Legal responsibility is a central feature of the "**Rule of Law**"

Crown Proceedings Act 1947, Government can now be sued

Ministerial Responsibility and the Courts.

- Ministerial responsibility is based upon convention
- Courts recognise the principle **Carltona v Commissioner of Works**

"The Minister is responsible. It is he that must answer before Parliament" – **R v S.S. Home Dpt, ex parte Oladehinde.**

Political responsibility

Owed to Parliament - most important aspect of Ministerial Responsibility

Minister is accountable to Parliament, on behalf of the electorate

Question time

Could bring down a government – motion of confidence

Implications at elections

INDIVIDUAL MINISTERIAL RESPONSIBILITY

Responsibility for government department.

- Minister is responsible for his/her incompetent policy decisions. Sir Thomas Dugdale
 - The minister is not personally responsible for incompetent Cabinet Policy
 - The minister is not responsible for the day to day affairs of the department
- **Churchill Matrix prosecution**
 - **Sir Richard Scott's** report 1996 on arms to Iraq
 - 'Howe Guidelines' the Howe Guidelines policy on defence-related exports to Iraq and Iran

Issue – when can sensitive security information be withheld from the House of Commons – without misleading the House?

Revised Code of Conduct and Guidance on Procedures for Ministers

Responsibility for personal behaviour.

- Socially unacceptable behaviour in a minister's private life may indicate unfitness to hold office
- May expose a minister to blackmail and lead to abuse of office
 - Lord Jellicoe and Mr Lampton consorted with prostitutes
 - Profumo Scandal 1963 - Profumo lied to Parliament about his conduct

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Mechanisms of accountability

- 1). Resignation - end of problem.
- 2). Failure to resign
 - a) Motion of censorship
 - b) Salary can only be taken away by statute.
 - c) Adverse political cost for the individual and the party.
 - d) PM can remove a minister.
 - e) Cabinet reshuffle – sent to back bench or move sideways.
- 3) Question time.

Function and Purpose of Individual Ministerial Responsibility

- 1) to apportion blame and responsibility.
- 2) to punish – deterrent – and replacement
- 3) to preserve impartiality and anonymity of civil servants.

Does an errant minister have to resign?

Professor Finer : sanction is irregular and unpredictable

- Resignation depends on the Prime Minister
- Character of the minister
- Mood of the party
- Tone of the opposition
- Vigour of an attack by the press.

Effectiveness

- The 'fortunate' go to another ministry
- The 'less fortunate' may go to another place
- or the backbenches.
- Some leave Parliament

Some Examples of Resignations for Individual Responsibility since 1960

- Profumo (1963) Lied to the House of Commons
- Maudling (1972) over the Poulson investigation
- Lambton and Jellicoe (1973) over a prostitute
- Fairbairn (1982) conduct of a prosecution and problems in his private life
- Carrington, Atkins and Luce (1982) Falklands
- Parkinson (1983) affair with secretary
- Brittain (1986) leak of Solicitor General's Letter.
- Edwina Currie – Salmonella in eggs
- Estelle Morris – A Level Scandal - education

Some Examples of failures to resign

- Lennox-Boyd (1959) Colonial Secretary re Mau Mau uprising in Kenya
- Whitelaw (1982) re Fagan intrusion into the Queen's bedroom
- Prior (1983) Break out from the Maze Prison
- Michael Howard – prison breakout 1996 in England

WORKSHOP 8

MINISTERIAL RESPONSIBILITY

1. Explain the meaning and practical importance of the notion of individual ministerial responsibility.
2. *'Ministerial responsibility as a mechanism for accountability and control has suffered a sharp decline - a decline directly related to the complex activities of modern government and a weakening of the principle of Civil Service anonymity.'*

Discuss.

3. "The government has made small slips before, of course. It has made minor errors of economic policy. It has occasionally deported the wrong people. It has gambled on the wrong defence system. It invaded the wrong country. All these peccadilloes can be forgiven ... but now a member of the government has slept with the wrong woman".

M. Frayn 1963, commenting on the Profumo scandal.

"I will only say that if Ministers are going to resign when anyone makes a mistake in a department, there will very soon be no Ministers left. If on the other hand, everything is referred to Ministers, departments will rapidly grind to a stop".

D. Jay commenting on the collapse of the Vehicle & General Insurance Company in 1971.

As a means to understand and comment upon the individual responsibility of Ministers what merit, if any, is to be found in the views of Frayn and Jay?

4. In relation to the Doctrine of Ministerial responsibility, discuss the resignations of Peter Mandelson, Estelle Morris and David Blunket.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 15 : LECTURE COLLECTIVE MINISTERIAL RESPONSIBILITY

Introduction

Mackintosh : collective responsibility developed in 'fits and starts.' 18th century ill defined – no division between individual and collective.

Grey : by mid-19th century accepted as basis of British Parliamentary government.

Definition of Collective Responsibility?

Lord Salisbury 1878: *"For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues . . . It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet. Who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most important principle of parliamentary responsibility established."*

Bradley & Ewing on collective responsibility

- *PM & Serving Ministers collectively responsible to Parliament, and Commons for policy.*
- *All ministerial offices at disposal of the PM whatever the circumstances.*
- *Collective responsibility is a means of defending an incompetent or unpopular minister.*
- *Serving ministers may not publicly criticise or dissociate himself from government policy.*
- *Concealment is inherent in collective responsibility.*
- *The principle of secrecy attaches to communications departments.*
- *Sovereign is advised of collective decisions of the Cabinet by PM.*
- *Relies on collective decision making – undermined by cabals - Heseltine*

Agreements to differ : Exceptions to convention

- 1) 1932: Free vote on tariffs.
- 2) 1975 Free vote on E.E.C. referendum.
- 3) 1979 direct elections to Europe.

Rationale of Collective Responsibility ?

1. To allow a free and genuine debate in cabinet
2. United front – confidence in government policy – to people and business home and abroad.

Duration of Responsibility – 30 year rule – official secrets

Indefinite but intended to continue after the government leaves office. Weak- memoirs

- Barbara Castle memoirs
- Richard Crossman diaries
- Harold Wilson memoirs
- Thatcher memoirs plus
- Pym, Prior, Gilmour, Clark etc

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Resignation Speech exception

- In a minister's resignation speech the nature and reasons for disagreement can be given.
- Geoffrey Howe resignation speech was extremely damaging to PM Thatcher.
- Provided opportunity for Heseltine to make a leadership challenge.
- Thatcher resigned – John Major succeeded her.

Cabinet Responsibility & Thatcher

Lord Whitelaw *"I am asked if Margaret Thatcher ever listens to points of view other than her own I think she probably enjoys an argument more than most people, and the more vigorous it is the better, as far as she is concerned she can certainly be swayed and influenced by good arguments in the final event ... no one could have presided over such a successful team as Leader unless they had been prepared to take account of internal discussions ... she is certainly the type of chairman who leads from the front and from the start of a discussion makes no secret of her own feelings and views"*

Cabinet Secrecy

A.G. v Johnathan Cape Ltd and A.G. v Times Newspapers Ltd.

Crossman diaries. Case ignored PC Oath and OFSA 1911. Held :

- 1) Democracy requires public to be informed of government practice.
- 2) Sufficiently time lag to ensure no untoward consequences arose from disclosure.

Dismissals

- Post 1945 Attlee dismissed chief whip : Described government's handling of a dock dispute as crazy.
- Personal Secretary to Minister of Agriculture dismissed: Criticised government's feather bedding of farmers.
- Foreign Secretary, Hoare, 1935 Abyssinia Crisis : initially supported but later abandoned by Government.

Resignations

- Edwina Currie salmonella egg scare – resigned – but followed by Mad Cow Disease crisis.
- Estelle Morris : Education – A Level Scandal
- Clare Short – Robin Cook – Iraq War

Problems with Collective Ministerial Responsibility.

- Relies on convention /political enforcement
- Shields government from accountability
- Absence of protection against incompetent Ministers
- Secrecy in cabinet prevents collective responsibility working
- Individual and cabinet responsibility conflict
- Resignation is unpredictable and unreliable

WORKSHOP 9

PRIME MINISTER AND CABINET

1. *"The post-war epoch has seen the final transformation of Cabinet Government into Prime Ministerial government"*. Crossman. R.

Discuss.

2. *"Important arguments concern the relationship of the Prime Minister to the Cabinet ... the relationship (can) be summed up by saying that the Prime Minister is '**primus inter pares**', the first among equals"*. Hartley & Griffiths.

Is this an accurate interpretation of the situation in recent years ?

3. *" ... the Prime Minister is more powerful than any other Minister, and than most combinations of Ministers, but less powerful than the Cabinet collectively"*. Hood Phillips

How accurate an assessment would this be as regards post 1945 Premierships?

4. In relation to Cabinet Responsibility, discuss the resignations of Clare Short and Jack Straw.

5. In relation to Prime Ministerial government, discuss the calls for Tony Blair to be impeached for pursuing an illegal war against Iraq.

6. Consider the effectiveness of Judicial Inquiries as a method of determining the propriety or otherwise of the actions of the cabinet, with particular reference to statements made prior to the invasion of Iraq, justifying the need for such action.

7. *" .. for all that passes in a Cabinet, each Member of it who does not resign is absolutely and irretrievably responsible, and that he has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by one of his Colleagues ..."*

Lord Salisbury.

Is this statement of equal validity now as when Lord Salisbury made it?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 16 : LECTURE THE EXECUTIVE

COMPOSITION OF THE EXECUTIVE :

- Privy Council
- Prime Minister, Cabinet & Non-Cabinet Ministers
- Government Departments
- The Civil Service & agencies e.g. Police and Prison Service

THE PRIVY COUNCIL

The Privy Council : Functions

- Succession of the monarch; coronations and state funerals
- Issues Orders in Council
- Issues Royal Charters
- Emergency powers ; national security

The Privy Council : Personnel

- Lord President of the Council; Ex Lord Presidents;
- Archbishop of Canterbury and ex Arch Bishops; Bishop of York;
- Lord Chancellors and ex Lord Chancellors;
- Cabinet Ministers and ex Cabinet Ministers;
- Senior judiciary e.g. Law Lords, M.R. etc.

The Privy Council as a Court of Law.

- Final Court of Appeal for Commonwealth

THE GOVERNMENT

Accountability : via debates on

- government policy (votes of no confidence),
- Parliamentary Question Time and
- during the passage of legislation.
- by finance committees of the Houses of Parliament,
- during the budget speech and the passage of the Finance Bills.

Functions of the Executive / Government

- economic policies
- social policies
- law and order policies
- foreign affairs including EU & Commonwealth
 - the signing of treaties, defence of the realm, declarations of war and peace and organisation of the armed forces.

Monarch's original power based on

- conquest (William I);
- patronage (Earldoms etc) and
- divine right - loyalty.

Distinguish between powers exercised by

- The Crown personally, and Ministers of the Crown in the name of the Crown, administered by Crown Servants.

Executive power is now based on democracy through the ballot box.

The Powers of the Executive / Government :

- 1). **Acts of Parliament**
Controlled by both Houses of Parliament
- 2). **Delegated legislation** - controlled by
 - i) Parliament and ii) courts : Judicial Review.
- 3). **The Royal Prerogative** – controlled by Parliament and Judicial Review.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 17 : LECTURES

THE CABINET AND THE PRIME MINISTER

THE CABINET

1. Emerged from the Privy Council in Charles II's reign to advise the monarch.
2. Whigs and Tories – first political parties followed by labour.
3. Executive body with command over commons needed.

THE OFFICE OF PRIME MINISTER

- Office of Prime Minister developed by convention - early 18th century.
- **Lord Morely** *“The Prime Minister is the keystone of the Cabinet arch. Although in Cabinet all its Members stand on an equal footing, speak with an equal voice, and, on the rare occasions when a division is taken, are counted on the fraternal principle of one man, one vote, yet the head of the Cabinet is primus pares, and occupies a position which, so long as it lasts, is one of exceptional and peculiar authority”.*
- Since 1902 the Prime Minister has come from the Commons.

Selection of the Prime Minister

- Crown has the power to appoint whosoever he/she pleases.
- By convention, will appoint the leader of the winning party.
- All parties select their leader by a ballot.
- Arguably at election time the people chose the Prime Minister.

Functions of the Prime Minister

- to form a government:
- to choose the members of the cabinet :
- to chair cabinet meetings :
- to decide what government departments should exist and
- to decide what functions these departments will fulfil :
- to advise the sovereign :
- to advise the House of Commons of government policy and
- to defend it from criticism : and
- to represent the government in foreign affairs.

Prime Minister's powers of Patronage

- Ministers
- Government departments
- Senior Civil Servants
- Nomination of senior members of the judiciary,
- Bishops
- Parliamentary Commissioner for Administration.
- Members of the Lords

How powerful is the PM? Do we have

- Prime Ministerial Government:
- Presidential Government or
- Cabinet Government.

Brazier *“A Prime Minister's main political strength comes from the Cabinet and . . . from the parliamentary party”.*

Cabinet Committees : established by Thatcher

- Defence -
- overseas policy,
- economic strategy,
- home affairs and a legislation committee.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Cabinet Office :

- established in 1917
- Barnett – PM's 'Think Tank'

P.M's Power to Appoint.

P.M's Power to Dismiss Ministers.

Constraint's on P.M's powers to appoint and dismiss.

Power of ministers to threaten to resign.

Relationship between Prime Minister and Cabinet.

- Chooses number and type of cabinet committees exist.
- P.M. decides what the cabinet has decided
- Kitchen cabinets can bypass cabinet
- collective responsibility reinforces the powers of PM – requires silence

Basis of P.M's Power

- Personality
- Popularity - publicity
- Experience
- Access to information
- Controls election time

RECENT PRIME MINISTERS – ISSUES - POWER

1945-1951 Clement Attlee (Lab) Welfare State - Consensual

1951-1955 Winston Churchill (Con) - Consensual

1955-1957 Anthony Eden (Con) Suez Crisis – Hungary – Non-consensual

1957-1963 Harold Macmillan (Con) – bad health - Consensual

1963-1964 Alec Douglas-Home (Con) Left HL to joins HC - Consensual

1964-1970 Harold Wilson (Lab) Rhodesia, Aden, Vietnam – Decimalisation – Strikes – Non-consensual

1970-1974 Edward Heath (Con) EEC 1972 – Strikes - Consensual

1974-1976 Harold Wilson (Lab) Strikes – Winter Discontent - Consensual

1976-1979 James Callaghan (Lab) Lib/Lab Pact – Strikes - Consensual

1979-1990 Margaret Thatcher (Con) Wets : Minor's Strike – Falklands – Europe - Non-consensual

1990-1997 John Major (Con) – Kuwait – Black Wednesday – ERM – Maastricht – Sleaze - Consensual

1997- Tony Blair (Lab) – Iraq – EC Constitution – House of Lords – Reformer – Trust - Non-consensual

CIVIL SERVANTS AND THE EXECUTIVE

CIVIL SERVICE

- Anonymity of the Civil Servant
- Accountability of the Civil Servant
- Appointed bodies and accountability
- Politicisation of the Civil Service

Ministers and Civil Servants Relationship

- Relationship between civil servants & ministers ill defined
- Are civil servants too powerful?
- Can civil servants blow the whistle?
- Allocation between Civil Servants and Ministers uncertain.
- Should public know who powerful Civil Servants are and hold them to account?
- Ministers can hide behind Quangos - unaccountable to Parliament.
- Impact of PCEW

WORKSHOP 9

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Discuss.

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5. In relation to Prime Ministerial government, discuss the calls for Tony Blair to be impeached for pursuing an illegal war against Iraq.

6. Consider the effectiveness of Judicial Inquiries as a method of determining the propriety or otherwise of the actions of the cabinet, with particular reference to statements made prior to the invasion of Iraq, justifying the need for such action.

7. *" .. for all that passes in a Cabinet, each Member of it who does not resign is absolutely and irretrievably responsible, and that he has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by one of his Colleagues ..."*

Lord Salisbury.

Is this statement of equal validity now as when Lord Salisbury made it?

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEKS 18 & 19 : LECTURES THE ROYAL PREROGATIVE IN DOMESTIC AFFAIRS

INTRODUCTION

- The Executive and the Royal Prerogative
- The Monarchy and the Royal Prerogative
- The role of the Monarchy
- Executive Structure
- Powers of the Monarchy
- Exercise of Power
- Making of Awards
- List of Executive Rules
- Legal Rules
- Royal Prerogative
- Definition
- Problems with the Royal Prerogative
- The Royal Prerogative in Domestic Affairs
- The Royal Prerogative and the Citizen
- The Royal Prerogative and the Courts
- Limiting the Royal Prerogative in the Courts
- Judicial Prerogatives

EXECUTIVE AND THE ROYAL PREROGATIVE

- The sources of the power of the Executive.
- The structure of the Executive.
- The functions of the Executive.
- Judicial control of the Executive.
- Parliamentary control of the exercise of Executive power.

MONARCHY AND THE ROYAL PREROGATIVE

- The role and importance of Her Majesty in the Modern Constitution.
- The nature and importance of the Royal Prerogative.

CIVIL SERVICE – TENURE OF OFFICE

- Sources of Law
- Conditions of Service
- Security of Tenure
- Statutory Employment Conditions
- Judicial Review
- Recovery of Wages

ROYAL PREROGATIVE IN FOREIGN AFFAIRS – ACT OF STATE

- What is an Act of State?
- Definition
- Same question to consider
- Act of State
- Act of State and the Courts
- Where can an Act of State occur?
- Act of State in relation to individuals
- Who is protected?

WORKSHOP 10

EXECUTIVE POWERS

- 1) The royal prerogative is the *"residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown."* Dicey 'The Law of the Constitution'.

How helpful is this definition as regards understanding the royal prerogative?

- 2) Consider to what extent (if at all) the exercise of prerogative powers is subject to control by the judiciary.

- 3) Ravistan is a small foreign state which enjoys good relations with Britain. Extensive rioting has broken out in the capital of Ravistan and the Ravistan Government asks the British Government for military help. The British Government sends fifty soldiers to Ravistan with orders that they restore law and order speedily.

The soldiers search all the houses in the capital for arms and ammunition. They seize, inter alia, a valuable antique dagger belonging to Hector, a British subject and citizen of Australia, and an antique pistol belonging to Isabelle, a Spanish citizen. Both Hector and Isabelle are the lawful owners of the weapons in question.

During the unrest, local citizens destroy the soldiers' provisions. The British commanding officer then requisitions, without payment, food belonging to Jack a citizen of the U.K. and the colonies, living in Ravistan. The commanding officer does this with the full knowledge and consent of the President of Ravistan.

Despite its close connections with Britain, the foreign office certifies Ravistan is a foreign state.

Advise Hector, Isabelle and Jack whether they have any recourse against the British Government through the English Courts.

- 4) Sanjay was employed in December 2003 by the Civil Service to work in the Passport Office. He was given an undertaking at the commencement of his employment that he would be employed for a minimum of two years. He was also told that there would be a month notice period prior to any termination of his employment. During 2004 a number of salary payments were not made to him and he is now owed a total of £780. Sanjay had queried the non payment and a clerk had told him that there was a time keeping problem. In January 2005 Sanjay goes to the Head of Personnel and demands a hearing in relation to the matter. Sanjay is told that he is dismissed and he is escorted from the workplace.

Advise Sanjay as to what legal actions he could consider taking in order to collect his salary arrears and to return to work.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

WEEK 20 : LECTURE

CIVIL LIBERTIES AND HUMAN RIGHTS

WHOSE LAW GOVERNS LIBERTIES AND FREEDOMS IN THE UK?

- Joint Declaration by European Parliament, Council and Commission on Human Rights.

FREEDOM OF EXPRESSION

- The ' Right ' to free speech.
- The Universal Declaration of Human Rights : UN Charter
- European Convention on Human Rights.
- Article 13 : American Convention on Human Rights 1969 - Costa Rica
- Article 10(2) European Convention on Human Rights.
- Article 13 American Convention on Human Rights Costa Rica
- Liberty of the Press / Media
- Elections and political fairness :
- The System of D Notices.
- Censorship and the Gulf War (No1)
- Media censorship of the I.R.
- The Theatre.
- Video
- Blasphemy
- Obscene Publications.
- Conspiracy to corrupt public morals.
- State Interests and Freedom
- Offences against the Crown & Government
- The Frank's Committee of Inquiry 1972
- Sedition.
- Offences against the Public Peace & morals
- Incitement to Racial Hatred
- Offences against Public Justice
- Contempt of Court Act 1981
- Democracy and Freedom of Speech.
- Privy Council Cases
- Sources
- Reading Materials on Civil Liberties
- Reading Materials on Freedom of Expression

HUMAN RIGHTS ACT AND THE ECHR

SAMPLE QUESTIONS

- 1 *“The unwritten constitution lays emphasis on the virtues of the common-law and the legislative supremacy of Parliament. It relies on the political process to secure that Parliament does not override the basic rights and liberties of the individual, nor remove from the courts the adjudication of disputes between citizen and the State arising out of the exercise of public powers.”*

Consider the proposition that the traditional British approach to Civil Liberties outlined above is an unacceptable approach to the issue of rights.

- 2 *“The absence of a Bill of Rights and a written Constitution does not make the U.K. Constitution undemocratic but it would be more democratic if it contained such features. The advantages to be gained from the introduction of a Bill of Rights or a written Constitution are considerable even though fundamental constitutional change would be necessitated.”*

Consider the above propositions.

- 3 Consider the proposition that the United Kingdom should enact a new tailor-made entrenched Bill of Rights.

- 4 *“The Human Rights Act 1998 has radically altered the notion of judicial precedent and interpretation.”*

Discuss.

WEEK 21 : LECTURE

**PARLIAMENTARY COMMISSIONER FOR ENGLAND AND WALES
THE OMBUDSMAN**

GENERAL INTRODUCTION

- Parliamentary Commissioner for Administration
- Creation of the P.C.A.
- Appointment
- Methods of Investigation
- Jurisdiction of the Ombudsman
- The Select Committee on the P.C.A.
- Evaluation and reform

EVALUATION

- What is the Parliamentary Commissioner for Administration?
- What are the factors, which led to the creation of the Parliamentary Commissioner?
- Appointment of the Parliamentary Commissioner
- What is the Jurisdiction of the Parliamentary Commissioner?
- What can the Parliamentary Commissioner Investigate?
- Are there any restrictions on what the Parliamentary Commissioner can investigate?
- Does the PCA have any discretion as to what he investigates?
- What can the PCA investigate
- The investigation and Report of the PCA
- Accessibility and Public Awareness of the Parliamentary Commissioner
- The Complaints Procedure
- Recent Statistics
- Reform of the PCA
- Summary
- Reading List

PARLIAMENTARY COMMISSIONER FOR ENGLAND & WALES
SAMPLE QUESTIONS

1 Consider the function, purposes, powers and effectiveness of the Office of Parliamentary Commission in England and Wales

2 *"To the extent that, in many cases, the Parliamentary Commissioner for Administration has achieved redress for individuals where otherwise they would have been left without a remedy, his office must be regarded as fulfilling a useful function. In a number of ways, however, that usefulness might, it is thought, be increased".*

O. Hood Phillips. 'Constitutional and Administrative Law'.

Discuss.

3 *'The office of Parliamentary Commissioner for Administration or Ombudsman in Britain seems to me to provide a much needed support for individual ministerial responsibility.'*

Discuss.