

UNIVERSITY OF GLAMORGAN : LLB CONSTITUTIONAL LAW 2006 - 2007

Week Starting		WORKSHOP TOPIC
02.10.06	1	1a Studying Constitutional Law : What is a constitution? Ch 1
09.10.06	2	1b Studying Constitutional Law : What is a constitution? Ch 1
16.10.06	3	2a Police Powers Ch7
23.10.06	4	2b Police Powers Ch7
30.10.06	5	3a Public Order Ch8
06.11.06	6	3b Public Order Ch8
13.11.06		READING WEEK
20.11.06	7	4a Judicial Review Ch 11
27.11.06	8	4b Judicial Review Ch 11
04.12.06	9	5a Sovereignty Ch2,3 & 4
11.12.06	10	5b Sovereignty Ch2,3 & 4
18.12.06		Vacation
25.12.06		Vacation
01.01.07		Vacation
08.01.07	11	6a Parliament : Elections & HoL Ch6
15.01.07	12	6b Parliament : Elections & HoLCh6
22.01.07	13	7a Conventions Ch5
29.01.07	14	7b Conventions Ch5
05.02.07	15	8a Ministerial Responsibility Ch9
12.02.07	16	8b Ministerial Responsibility Ch9
19.02.07		READING WEEK
26.02.07	17	9a Cabinet & Prime Minister Ch9
05.03.07	18	9b Cabinet & Prime Minister Ch9
12.03.07	19	10a Executive powers Ch10
19.03.07	20	10b Executive powers Ch10
26.03.07	21	11a Q&A
02.04.07		Vacation
09.04.07		Vacation
16.04.07		Vacation
23.04.07	22	11b Q&A
30.04.07		Revision week
07.05.07		Examinations begin
14.05.07		Examinations
21.05.07		Examination end Friday

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

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.

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.

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.

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

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?

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?

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.

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?

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.

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.

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.