FINAL
Examination Paper

(COVER PAGE)

Session : May 2005
Programme : Certificate in Law
Course : LAW 141 : Constitutional & Administrative Law (2)
Date of Examination : August 13, 2005
Time : 8.00 – 11.00 am Reading Time : Nil
Duration : 3 Hours

Special Instructions :

This paper consists of SIX (6) questions. Answer any FOUR (4) questions in the answer booklet provided. All questions carry equal marks.

Materials permitted : Nil

Materials provided : Nil

Examiner(s) : Ms. Brinda Diana Paul
Moderator : Russell Hewitson, University of Northumbria

This paper consists of 3 printed pages, including the cover page.
This paper consists of SIX (6) questions. Answer any FOUR (4) questions in the answer booklet provided. All questions carry equal marks.

1. ‘A Constitutional Convention is a non-legal, but nevertheless binding rule of constitutional behaviour’. Tomkins

Discuss with examples, the meaning and effectiveness of such Conventions.

(25 marks)

2. “It is a complete myth that the European Communities Act 1972 constitutes a unique form of ‘higher law’ in our constitution. It is just a statute like any other statute, nothing more.”

Discuss.

(25 marks)

3. Brendan, the Secretary of State for the National Heritage, is a member of a group of sado-masochistic homosexuals. The group engages in serious sexual assaults upon each other in the privacy of their own homes. The activities of the group are uncovered by Derek, a journalist who works for the News of the Globe newspaper. Derek pays a large sum of money to a member of the group to give him details as to Brendan’s involvement.

Brendan is told by a journalist friend that the News of the Globe is preparing to publish a story about him. Brendan instructs Messrs. Rottweiler & Co., Solicitors, to seek an injunction against the newspaper on the grounds of libel. Brendan realises that the newspaper has a complete defence of justification and that he is therefore unlikely to obtain an injunction from the courts. However, he hopes that an aggressive legal action by his solicitors will frighten the newspaper into silence.

Brendan asks one of his junior Ministers, Ian, to arrange for the payment of £25,000 to Rottweiler & Co. on account. He tells Ian that the money should be drawn from the funds of the Department of National Heritage. He tells Ian that the spending of public money in this way is legitimate because the newspaper is interested in the story only because a Minister of the Crown is involved. Ian in turn instructs Beryl, a civil servant who works in the finance office of the department to make the payment, which is duly made.
It is Cabinet policy that Ministers should not issue writs arising out of their private affairs without the approval of the Prime Minister. The Prime Minister, Harriet, first learns of the writ and the allegations against Brendan, when she reads an account in the *News of the Globe* that the writ has been issued against it.

(a) Harriet, the Prime Minister, seeks your advice as to whether Brendan, Ian or both of them should be dismissed for breach of Ministerial Responsibility.

(b) Dennis, the chair of the House of Commons Select Committee on National Heritage seeks your advice on how Brendan, Ian and Beryl can be made to account to the House of Commons for what they have done.

Advice Harriet and Dennis. (25 marks)

4. ‘The Royal Prerogative allows those vested with discretionary powers on behalf of the Crown to flout the rule of law without accountability.’

Consider the extent to which this statement is justified. (25 marks)

5. Outline the grounds on which the decisions of public bodies may be challenged in an application for judicial review, and comment on the assertion that too often judicial review involves the judiciary substituting its own decisions for those of elected politicians. (25 marks)

6. ‘The delicate balance between sections 3 and 4 of the Human Rights Act 1998 allows the courts to give much greater protection to individual rights without undermining Parliamentary democracy.’

Give your reasons, with illustration from relevant case law, for agreeing or disagreeing with this statement. (25 marks)

- THE END -

*Law 141(F)May05/BrindaDianaPaul*