Summer Examinations 2016

LAW200816N

Module Title Public Law
Level Five
Time Allowed Two hours

Instructions to students:

- Enter your student number **not** your name on all answer books.
- Answer **two** out of **five** questions.
- All questions are equally weighted.
- Begin each question in a separate answer book; label each answer book clearly with the number of the question you are answering.
- All questions should be answered with reference to decided cases and other relevant authorities.

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1. In an attempt to support the regeneration of deprived and disadvantaged communities, Parliament passes the (hypothetical) Communities Development Act 2015. The Act establishes the Community Development Agency (CDA), and contains the following provisions:

- The CDA “may” award a grant “where it is satisfied that it is appropriate to do so” to “any community organisation or association in order to support the work of that organisation or association”.

- The phrase “community organisation or association” is defined as “any self-funding and not-for-profit organisation or association established primarily for the purpose of promoting the welfare of the residents of the community in question”.

- Decisions of the CDA “are final and conclusive, and may not be called into question in any court of law”.

The Toytown Housing Association is a group of local landlords who let properties exclusively to local tenants. It applies for a grant to renovate several of its properties, but is informed by the CDA that it is not covered by the Act because it is not a “not for profit” organisation, and also because its primary purpose is to make money for the landlords rather than to promote the welfare of residents.

The Toytown Sporting Association also applies for a grant in order to renovate a disused gymnasium in which it plans to offer free boxing lessons for local youngsters. Its application is accepted and considered by the CDA, but turned down on the basis that the CDA is “not satisfied that the promotion of boxing is an appropriate use of the resources at our disposal”.

The Toytown Housing and Sporting Associations both wish to seek judicial review of the CDA’s respective decisions.

Advise them.

How, if at all, would your advice differ if the statute stated that “a decision of the CDA may only be questioned in a court of law within 28 days of the date on which that decision is notified to the applicant”? 
2. “The appellants raise the argument that the time has come to reconsider the basis on which the courts review decisions of the executive, and in particular that the traditional *Wednesbury* rationality basis for challenging executive decisions should be replaced by a more structured and principled challenge based on proportionality.......It would not be appropriate for a five-Justice panel of this court to accept, or indeed to reject, this argument, which potentially has implications which are profound in constitutional terms and very wide in applicable scope. “ (*Keyu and others v Secretary of State for Foreign and Commonwealth Affairs and another* [2015] UKSC 69 [131-132] (Neuberger LJ))

Critically examine the implications of replacing “the traditional *Wednesbury* rationality basis for challenging executive decisions” by “a more structured and principled challenge based on proportionality”. To what extent do you agree with Lord Neuberger’s view that these are “profound in constitutional terms and very wide in applicable scope”?

3. To what extent do the common law powers of the police to deal with a breach of the peace, together with the provisions of s11-14 Public Order Act 1986, strike an appropriate balance between respecting individual human rights on the one hand and protecting the wider interests of society on the other?
4. Findlay is a doctor in general practice. Janet is one of his patients. Janet complains that, in the course of a routine consultation, Findlay made several inappropriate and suggestive remarks to her which left her feeling extremely upset and distressed. The matter is referred to the (hypothetical) National Medical Association (NMA), which convenes a disciplinary panel to hear the complaint. In accordance with the rules of the NMA Kildare J, who is a High Court judge, is asked to chair the panel.

Before the hearing begins, Findlay objects to the appointment of Kildare on the basis that when Kildare was a solicitor he had acted on behalf of a client who had unsuccessfully sought damages from Findlay in a property dispute. Kildare refuses to stand down, explaining that the earlier dispute was about property and thus unrelated to the disciplinary hearing, that he was previously acting on behalf of someone else as opposed to taking action in any personal capacity, and that in any event a High Court judge can be trusted to be impartial. The disciplinary hearing therefore proceeds with Kildare in the chair.

After Janet has given her evidence to the panel but before Findlay has had an opportunity to respond, he bumps into Kildare in the foyer of the hotel in which both of them are staying. After exchanging pleasantries, Kildare comments that he found Janet to be a “charming lady and a credible witness”. He then goes on to say that “we’re all looking forward to hearing your side of the story, although I must say it seems fairly clear to me where this is heading”. Findlay gives his evidence the following day.

At the conclusion of the hearing, Findlay is found guilty of “serious professional misconduct” and struck off the medical register. Explaining the severity of the penalty, Kildare explains that the panel feels “duty bound to support the zero tolerance policy of the NMA in matters of this nature”.

Findlay does not feel that he has been treated fairly. Advise him.
5. Consider the following (hypothetical) situation:

In 2005, the volcano on the Isle de Muerte, a colony of the United Kingdom (UK), erupted. Hot molten lava and poisonous gases spewed into the atmosphere making it impossible for the native population to stay on their island. The UK government of the day responded to this emergency by issuing an Order in Council, ordering the immediate evacuation of all the native population, with the promise that they would be able to return to Isle de Muerte once the eruptions stopped and the island was inhabitable again. The UK government additionally deployed various naval vessels to help with the evacuation of the islanders. These vessels were tasked then to police the evacuation zone around the island to ensure that no one returned to the island.

In 2010 the volcanic eruptions on the Isle de Muerte stopped. By 2015, however, the native population has still not been allowed to return home to Isle de Muerte.

In February 2016, when questioned on this matter, the UK government states that Isle de Muerte is now uninhabitable as a result of the previous volcanic eruptions. The UK government has therefore signed and agreed a treaty with the United States (US) for the US to build an unmanned monitoring and listening station on Isle de Muerte. This monitoring and listening station is vital to maintaining security. In addition, the UK government announces that compensation will be paid to each islander, but at a level lower than that stated in the Isle de Muerte Compensation Act 2015 that has not yet come into force.

Jack, a native of Isle de Muerte, wishes to return home. He seeks your advice on the legality of the UK government’s actions described above and his chances of challenging them successfully in the UK courts.