Examination Period 3: 2018/19

LAW200819N

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<th>Module Title</th>
<th>Public Law</th>
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<tr>
<td>Level</td>
<td>Five</td>
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<tr>
<td>Time Allowed</td>
<td>Two hours</td>
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Instructions to students:

- Enter your student number not your name on all answer books.
- Answer two out of six questions.
- Begin each question in a separate answer book; label each answer book clearly with the number of the question you are answering.

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<th>No. of Pages</th>
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1. James is a student at the (hypothetical) National University of Animal Science, training to become a veterinary surgeon. In the course of sitting his examinations at the end of the year, he becomes extremely frustrated with the content of one particular examination paper, which he finds extremely difficult. In the middle of the examination, unable to control himself any longer, he overturns his desk, screws his answer paper into a ball, throws it at Helen, the chief invigilator, and storms out of the room.

Under University regulations, the Head of Student Affairs (HOSA) is empowered to deal with “minor” cases of misconduct, but must refer “serious” cases to a Disciplinary Panel, which is chaired by the Director. The regulations give the HOSA the authority to decide whether a case is serious or not, and also state that “the nature and extent of any hearing” is at the discretion of the HOSA or the Director, whichever is dealing with the case.

The day after the examination, James is summoned to see Tristan, the HOSA. Tristan informs James that Helen has given him a “full verbal report” of the incident, that he finds James’s conduct “deplorable”, and that he will be referring the matter to the Disciplinary Panel with a “strong recommendation” that James should be expelled from the University. When James asks Tristan for an opportunity to explain his actions, Tristan replies that “that’s not up to me, but you can write to the Director if you want to”.

Immediately after his meeting with Tristan, James sends an email to Siegfried, the Director, in which he apologises for his actions and explains that he was under stress at the time. He also requests an opportunity to appear before the panel in person, pointing out that if he is expelled it is likely that he will be unable to pursue his chosen career.

Two days later, James receives an email from Siegfried which informs him that the panel had met the day before and had “no hesitation in accepting” Tristan’s recommendation, and that James is therefore expelled from the University with immediate effect. Siegfried explains that he did not consider it either “appropriate or necessary” for James to appear personally before the panel, because the “facts speak for themselves” and the panel “does not have time to grant a personal hearing to every student whose case comes before it”. He assures James that the panel “took into account” the explanation offered by James in his email.

James feels that his treatment by the University violates his right to be heard. Advise him as to the legal position.

2. “A line must be drawn between genuine and fanciful cases.” (W Wade and C Forsyth, Administrative Law (11th edn, OUP 2014) 390)

To what extent do the legal principles of bias, as developed and applied by the courts, effectively draw this line?
3. "There is much to be said for the more disciplined and transparent analysis imposed by proportionality....there is a strong argument that Wednesbury unreasonableness speaks to a bygone age”. (The Rt. Hon. Lady Justice Arden DBE, 'Proportionality: The Way Ahead' [2013] PL 498, 517).

Wednesbury “has stood the test of time, producing acceptable outcomes and operating as a principle for court intervention acceptable to Parliament. It provides a standard of review well understood by public authorities, courts and litigants, and so has helpfully provided a reasonable level of legal certainty” (Philip Sales, ‘Rationality, Proportionality ad Development of the Law’ [2013] LQR 223, 234).

Critically examine the respective merits of these two views.

4. 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, impose a disproportionate restriction on the right to protest?
5. Following a series of well-publicised accidents at fairgrounds and funfairs, Parliament passes the (hypothetical) Fairgrounds and Public Attractions Act (FPAA) 2018, which introduces a new and stricter licensing scheme for owners and operators of fairgrounds and funfairs.

The Act:

- Establishes the National Fairgrounds Authority (NFA), to which owners of particular attractions must apply for a licence.
- Sets out the criteria for deciding which attractions are covered by the Act.
- States that the NFA “may” grant a licence to an applicant if “it is satisfied that (s)he is a fit and proper person” to operate the attraction in question.
- Provides that “decisions of the NFA are final and conclusive and shall not be questioned in any court of law”.

Punch owns and operates a travelling puppet show, and is unsure as to whether or not he requires a licence under the Act. He writes to the NFA seeking guidance, and receives a reply which indicates that, in the view of the authority, his puppet show is covered by the Act and that he must therefore apply for a licence. He consequently does so, but his application is refused.

Explaining this decision to him, the NFA states that “in our judgement you are not a fit and proper person to operate an attraction of this nature, due in particular to your criminal record”. This is a reference to the fact that Punch had recently spent a brief spell in jail because, in protest against what he regards as the poor level of public services in his area, he refused to pay his Council Tax.

Punch now wishes to seek judicial review of the NFA’s refusal of his application. He believes that:

1. The NFA has mis-interpreted the Act, and that his puppet show is not covered by the Act in the first place.
2. Even if his puppet show is covered by the Act, his refusal to pay his Council Tax has no relevance whatsoever to his suitability to operate his puppet show.

With reference to each of these grounds, examine whether or not the provisions of the Act prevent him from seeking judicial review.

How, if at all, would your advice differ if the statute stated that “a decision of the NFA may only be questioned in a court of law within one month of the date of that decision”?
6. Assume that the following hypothetical situation is governed by the constitutional law and practice of the United Kingdom.

Fearing an attack from the armed forces of Guilder, Humperdinck, Prime Minister (PM) of Florin, negotiates and signs a treaty with the government of the neighbouring state of Rugen. The treaty provides that each state will send troops to help defend the other state in the case of an attack by Guilder’s armed forces. Buttercup and Westley, citizens of Florin, believe that the negotiation and signing of the treaty is unlawful, as the parliament of Florin was not consulted first.

Guilder’s armed forces invade Rugen. In accordance with the treaty, Humperdinck, PM, sends troops to help defend Rugen, although the troops leave Florin before their deployment is discussed and approved by Florin’s parliament. Westley is one of the troops sent by Florin to help defend Rugen. Westley is captured by Guilder’s armed forces and despite many requests by Buttercup, his fiancée, for the government of Florin to provide him with assistance, there is no diplomatic representation sent by Florin to Guilder to argue for Westley’s release. When questioned on this matter in the Florin parliament, Humperdinck, PM, refuses to discuss the matter, as it involves an "exercise of prerogative powers that cannot be questioned".

Meanwhile Humperdinck, PM, fearing that Guilder’s invasion of Florin is now imminent, orders the confiscation of all property on its border with Rugen to billet Florin’s armed forces there. Buttercup’s farm is confiscated, but she does not receive any compensation. An Act to provide compensation as of right if property is confiscated by the government had been enacted by Florin’s parliament the previous year, but this Act had not yet been brought into force. Humperdinck, PM, states that “the awarding of compensation, in these circumstances, is at my discretion alone, as it is an exercise of prerogative powers”. Advise Buttercup and Westley on the lawfulness of the actions of Humperdinck, PM, and the accuracy or otherwise of the views he has expressed.

End of Paper