

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualifications:-

B.Sc. LL.B.

ES2030: Law I

COURSE CODE : ENVS2030

UNIT VALUE : 0.50

DATE : 10-MAY-05

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

ENVS 2030 LAW I

Answer FOUR questions

All questions carry equal marks

QUESTION 1

Read the law report below and answer the questions that appear at the end of the report.

Subbings v Hepplewhite Police Authority. [2005]
Before Lord Justices Smith, Adams and Jenkins.

The police authority did not have the contractual obligation to fund the legal expenses of an officer of the rank of superintendent or below in internal disciplinary proceedings.

The appeal court so held refusing an appeal by Andrew Stubbings from the decision of Mr Justice Amery in the Queens Bench Division January 2003. The plaintiff had pleaded before the High Court that his contract of employment entitled him, and cast a duty on the Chief Constable and the Police Authority, to reimbursement of his costs in representation before an internal disciplinary committee.

Mr James Cattering QC and Mr Rolf Boogings for the applicant. Mrs Jane Alan QC and Miss Lisa Phipps for the Police Authority.

Lord Justice Smith said that the applicant, a police constable, had been charged with three counts of discreditable conduct, which were dismissed before the internal disciplinary committee of Hepplewhite Police Authority.

The applicant's police authority refused to consider meeting his costs of representation at the hearing, on the basis that they did not have the contractual obligation so to do.

The applicant relied on the authority of Evans v Chief Constable of Littlehampton [1999] House of Lords, Phillips v South of England Transport Police 2001 Court of Appeal and Berrings v West Australian Commissioners [2003] Perth High Court. These authorities supported the applicant's contentions that his contract of employment entitled him to reasonable expenses incurred in the fulfilment of his contractual duties.

The defendant Police Authority contended that S9 Police Powers Act [1960] together with Regulation 19 Ways and Means Regulations [1998] prohibited payments to be made "in the defence of disciplinary proceedings."

The applicant further relied on the Human Rights Act 2000 S17 which acknowledge the right of persons accused to proper representation before "A court or other tribunal effecting the liberty, or civil rights of a citizen." Further the applicant pleaded Article 12 Treaty of Rome which established the right of European citizens to a "fair trial."

His Lordship recognised that this action was supported by the Police Federation and was of fundamental importance to police officers who found themselves subjected to investigation and disciplinary proceedings arising in the course of their employment. Currently, the Federation covered the legal expenses of officers in their membership as one of their membership rights. However, in recent years the number of proceedings had become so frequent that the Federation could no longer meet the costs from their budget. In cases such as this where Mr Stubbings had been found to have acted properly, in accordance with his duties, the applicant pleaded that the terms of a police officers contract of employment cast a duty on the Police Authority to meet the costs.

Mr Justice Smith was clear that no such contractual obligation fell on the Police Authority. They were not liable for Mr Stubbings costs. Whilst it was to be regretted that officers found themselves the subject of disciplinary action it was for the Federation to arrange its financial affairs appropriately or to negotiate new contractual terms which could be incorporated into all police officers' contracts of employment.

Lord Justices Adams and Jenkins agreed.

Rose, Beans and Settle for the applicants. Jones and White for the Police Authority.

- a. Explain if the case can be classified as civil or criminal and the factors which lead you to your conclusion. (5 marks)
- b. Identify the sources of law used by the court to reach its decision. If the sources of law had been in conflict, what order of priority and importance should the judges apply to each source? (5 marks)
- c. There are three types of lawyers involved in this case. Identify them and explain how each has qualified to do their job and their specific role in the case. (8 marks)
- d. Explain the legal issue before the court and the decision reached. Do you consider the decision sensible in terms of the sources cited and the practical effect of the judgement? (7 marks)

(25 marks)

QUESTION 2

The Health and Safety at Work etc Act 1974, led to a new era in health and safety legislation. The Act moved the law away from a system of detailed, prescriptive and inflexible rules to one based on the principles of risk assessment and good practice, thus allowing companies to set their own safety standards and to develop their own safety procedures. Discuss the duties that the Act imposes on a main contractor employer.

(13 marks)

“The principal contractor is given responsibility and power under the Construction Design and Managements Regulations 1994 (CDM Regs) to ensure compliance with the construction phase health and safety plan, and such powers which include allowing him to restrict access to authorised persons and to give directions to any sub-contractor” Berwin Leighton Paisner, “Legal aid” Building 26/3/2004 page 62.

Discuss.

(12 marks)

(25 marks)

QUESTION 3

A project involves the demolition and re-building of the middle building of a terrace of five converted office buildings in a city centre. The demolition involves the retaining and temporary support of the façade at the front of the building until such times as the new building works can incorporate this retained façade into the new structure. In order to accommodate the new mechanical and engineering services plant and equipment and the lift motor room, a basement will to be constructed within the new building. As such, this basement construction will involve underpinning the party walls on each side of this new building. The terrace office buildings either side of the proposed new building are owned by different organisations. The project therefore requires:-

- a) the underpinning of both party walls (10 marks)
- b) the use of the pavement at the front of the building to provide for temporary works scaffolding to support the retained façade (5 marks)
- c) the provision of construction material storage areas on the highway (5 marks)
- d) the provision for rubbish skips also to be deposited on the highway. (5 marks)

As prospective Project Manager for this contract, explain the legislative requirements, processes and procedures that you would need to follow in order to obtain the necessary agreements and permissions for the above requirements.

(25 marks)

QUESTION 4

- a) Section 1 of the Employment Rights Act 1996, requires an employer to give an employee a written statement of particulars of the employment. This statement must be given not later than two months after the commencement of the employment.

Describe the particulars that must be given. (10 marks)

- b) On the 1st October 2004, the Employment Act 2002 (Dispute Resolution) Regulations came into force. These regulations established a three step disciplinary and dismissal procedure which all employers must now follow.

Explain this three-step process. (15 marks)

(25 marks)

QUESTION 5

- a. HHJ Bowsher QC in VHE Construction plc v Alfred McAlpine Construction Ltd (1997) stated that it is remarkable how the question of “whether there is a contract between parties and if so, what are the terms”, is probably the most frequently raised issue in the construction industry.

Explain the basic essentials for the formation of a valid contract. (8 marks)

- b. In Blackpool and Flyde Aero Club v Blackpool BC (1990) it was suggested, that for example, main-contractors and sub-contractors may have a contractual right to have their tenders opened and considered.

Discuss. (8 marks)

- c. Liquidated damages should be a genuine pre-estimate of the losses the employer is likely to suffer if the project is delayed beyond the completion date.

Discuss. (9 marks)

(25 marks)

QUESTION 6

You are a project management for construction student currently undertaking a summer work placement period with a legal practice specialising in construction law. Your supervising solicitor has asked you to write a brief report on the following issues that she is having in the application of the law of contract issues arising from her construction industry clients.

- a. A contractor has submitted a design and build tender in competition for the construction of a new hotel. At a meeting between the client's representative and the contractor, the contractor is advised that his scheme design and tender price has been successful and that he will be awarded the contract. However, the representative makes it clear that the award of the contract is subject to formal board of director's approval. As time is an important element of the contract, the client's representative asked the contractor to undertake a number of design changes and to start to prepare the site for construction activities by erecting a hoarding around the site, installing temporary buildings and temporary services to the site. Following the completion of this work, the contractor was advised that no contract will be forthcoming because the client hotel group had recently been taken over by another hotel group and the new owners had put an indefinite stop on commencing all new construction work.

(11 marks)

- b. A private customer who has recently had new pvc windows complete with hermetically sealed double glazing installed in her house, is concerned about the "satisfactory quality" and "fitness for purpose" issues because she thinks that the double glazing is faulty because the windows are permanently steamed up within the double glazing air space, and as a result she only has limited vision to the outside.

(7 marks)

- c. Where a supplier of pre-cast concrete units does so on standard forms of conditions of sale and a builder purchases these materials on his standard conditions of purchase, which conditions apply now that a dispute has arisen?

(7 marks)

(25 marks)