

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

LL.B.

LL.B. Intermediate: Public Law

COURSE CODE : LAWSINT3

DATE : 12-MAY-03

TIME : 10.00

TIME ALLOWED : 2 Hours 30 Minutes

PUBLIC LAW

Answer **THREE** questions

1. Strict separation of powers theory would require that only Parliament, and not the judges or ministers, make law. What dangers are there in the fact that such a strict separation does not operate in the UK? How are any such dangers dealt with?
2. 'The judges have consistently refused to grasp the opportunity for creative law-making offered by the Human Rights Act 1998. Instead, they have clung to the existing common law. Nowhere is this more evident than in the cases involving the right to respect for private life. Citizens of the United Kingdom still do not have a formal legal right to privacy'.

Explain and discuss this view.

3. 'Every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule.' (European Court of Justice, *Amministrazione delle Finanze dello Stato v Simmenthal*, 1978)

Can this doctrine be reconciled with the UK constitutional doctrine of parliamentary sovereignty?

TURN OVER

4. Mr and Mrs Jones reside in St Peter's ward in the London Borough of Isleden. They have two young children, Joseph and Mary. They are devout Anglicans who regularly attend the local parish church in their ward. The local primary schools in their ward have very low standards of education. St Clements Parochial School, a church school in the next ward which is funded by the local education authority, is willing to admit Mary and Joseph.

As a matter of policy the London Borough of Isleden insists that that local children go to schools in their own ward to avoid unnecessary school journeys, especially by car. After representations from Mr and Mrs Jones, the Council agrees to make an exception to its policy, on condition that the children are not driven to St Clements by private car. The Council confirms its decision in writing.

Before the children start school at St Clements, the Council is deemed by the government to be a failing educational authority, and its functions as an educational authority are transferred to a private body, Camford Educational Associates (CEA). CEA adopts a very strict policy of insisting that children go to school in their own wards, mainly to stop the well-to-do middle class from moving their children to schools elsewhere and leaving local schools with disadvantaged children only.

Without giving the Jones any opportunity to make representations, CEA inform Mr and Mrs Jones that in accordance with CEA's new policy, Joseph's and Mary's places at St Clements Parochial School have been cancelled and that Joseph and Mary must attend one of the schools in their own ward of St Peter's.

Advise Mr & Mrs Jones.

5. 'English courts have departed progressively from the use of the *Wednesbury* standard of unreasonableness to review the rationality of acts by public authorities, and this development is to be greatly welcomed.'

Discuss, with reference to relevant cases.

CONTINUED

6. Her Majesty's Prison Snake Gully ('HMP Snake Gully') was constructed in 1800. The prison is operated by a company called Group Three and a Half. Owing to the age of the building the prison cells do not have lavatories. Prisoners are locked up, 4 men to a cell, for 18 hours a day. While locked up the prisoners are forced to use buckets as makeshift lavatories. A life prisoner, Jonathan, is leading a campaign for the prison facilities to be improved so that they comply with modern standards of hygiene. The prisoners are being supported in this campaign by a national charity, Justice for Lifers. HMP Snake Gully refuses the prisoners' demands on the ground that they would destroy the building's architectural integrity.

Advise Jonathan and Justice for Lifers about their chances of succeeding in a claim for judicial review of HMP Snake Gully's decision.

END OF PAPER