

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

LL.B.

LL.B. Part II: Civil Liberties and Human Rights in The United Kingdom

COURSE CODE : LAWSII35

DATE : 20-MAY-05

TIME : 10.00

TIME ALLOWED : 2 Hours 30 Minutes

CIVIL LIBERTIES AND HUMAN RIGHTS IN THE UNITED KINGDOM

Answer **THREE** questions.

Where there is an overlap between your answers on questions to this paper and your assessed essay, no credit will be given for mere repetition of material from your assessed essay.

1. Answer **BOTH** a) **AND** b):

- a) Chimea and Wanduzke are members of the Swibalmi ethnic group, who have been recognised as possessing refugee status by the UK government and have therefore taken up residence in Wood Green, south London, where there is a large Swibalmi community. This community in Wood Green has faced considerable discrimination and hostility from the local white community, which has been stirred up by several public meetings and protest meetings organised by the local branch of the British National Party (BNP), who claim that the Swibalmis are taking over the area, lowering property prices and taking all the best council flats. The ethnic tension in the area has resulted in recent fighting between white and Swibalmi youths, during which two Swibalmis and one police officer were seriously injured. This attracted considerable media comment, and the local chief constable has commented that the Swibalmi community are particularly aggressive and prone to disturb public order.

Chimea and Wanduzke decide to organise a mass demonstration to protest against the racism suffered by the Dagovian community. However, the day before the march takes place, the local chief constable obtains a court order banning the meeting on the grounds that it may trigger further violence. Chimea and Wanduzke protest to the police that the BNP have been able to organise public meetings and demonstrations: they are told that preventing such activity by the BNP would simply cause more racism and violence, and that the Swibalmi community should 'lie low for the time being'.

Advise Chimea and Wanduzke.

- b) What difference, if any, would it make to the protection of fundamental rights if the UK were to sign and ratify Protocol 12 to the European Convention on Human Rights?

TURN OVER

2. "The Article 6 right to a fair trial has proved to be a fertile source of due process rights for a broad range of public decision-making institutions, but the jurisprudence of the European Court of Human Rights runs the risk of diluting the content of the right by spreading it across too wide a range of institutions."

Discuss.

3. Answer **EITHER** a) **OR** b):

- a) "Torture is such a serious violation of human dignity that Article 3 understandably imposes an absolute, unqualified, non-derogable prohibition. The problem is that it is increasingly difficult to distinguish between torture and the other forms of treatment included in the protection of Article 3 which arguably do not merit such protection. This risks bringing Article 3 into disrepute."

Discuss.

- b) "The test of what is degrading has been so diluted by the jurisprudence of the European Court of Human Rights that the serious nature of a violation of Article 3 of the Convention has been diminished, thereby devaluing the worth and effect of Article 3."

Discuss.

4. "Terrorist emergencies justify extensive and far-reaching security measures that may legitimately restrict the enjoyment of fundamental rights: to expect courts to adopt a restrictive approach to such emergency measures is to emphasise concern for abstract ideals over common sense".

Discuss.

5. "The European Charter of Fundamental Rights has the potential to transform for the better the protection of human rights within European Community Law."

Discuss.

CONTINUED

6. “There are undoubtedly different types of speech...some of which are more deserving of protection in a democratic society than others. Top of the list is political speech...This includes revealing information about public figures, especially those in elective office, which would otherwise be private but is relevant to their participation in public life” (Baroness HALE in *Campbell v MGN Ltd*).

Discuss this statement. How has the European Court of Human Rights treated the categories of speech mentioned by Baroness Hale? How did the House of Lords treat the publication at issue in the *Campbell* case?

7. “Proponents of ‘universalist’ theories of human rights disregard the real differences that exist between different cultures, religions and societies as to what constitutes the ‘good life’, and therefore in reality argue for the imposition of a ‘Western’ model of rights.”

Discuss.

8. The Joint Committee on Human Rights has suggested that the test for whether a private body’s activity should be treated as a “function of a public nature” under section 6(3)(b) of the Human Rights Act 1998 should be whether the government has taken responsibility for it as a matter of public interest, for instance as part of a government programme of state provision.

What difference, if any, would this test make if the facts of cases such as *Poplar Housing and Regeneration Community Association v Donoghue* (2001) and *R. (Heather) v Leonard Cheshire Foundation* (2002) were to arise again?

Should the Joint Committee’s test be adopted by the courts?

What other tests, if any, would be preferable?

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