Common Law Reasoning and Institutions

Wednesday 18 May 2011: 10.00 – 13.15

Candidates will have fifteen minutes during which they may read the paper and make rough notes ONLY in their answer books. They then have the remaining THREE HOURS in which to answer the questions.

Candidates must answer the COMPULSORY question in Part A and THREE from the SEVEN questions in Part B.

Candidates should answer all parts of a question unless otherwise stated.
PART A

Candidates must answer all parts of this **COMPULSORY** question.

1. (a) Answer all questions.

   i. In order to discover the database hosting the Weekly Law Reports (W.L.R.) which tool from the Online Library website would you use?

   ii. What does the abbreviation Q.B. stand for in the citation [2006] Q.B. 588?

   iii. What is the name of the government department with responsibility for affairs relating to criminal law, prisons and sentencing?

   iv. Explain, in outline, the process involved in finding an article in the M.L.R. using the Online Library.

   v. On which freely available online database can you find the transcripts of judgments as handed down by the court hearing the case?  

      **(5 marks)**

(b) Answer all questions.

   i. On which of the six topics was the essay which you submitted via the VLE?  How did you first understand the topic and to what extent did your understanding of the question change as you read material?

   ii. Explain how you located source material. Which sources were of most use in constructing your essay?  Rank these sources in terms of their authority and ease of understanding.

   iii. Outline your conclusions and justify them by tracing arguments from the sources you have identified.

   iv. If you were to undertake the same research exercise tomorrow what, if anything, would you do differently?  

      **(20 marks)**
PART B

2. ‘Provided that only suitable cases are dealt with informally, Alternative Dispute Resolution has an important role to play in the civil justice system.’

Discuss.

3. EITHER

(a) ‘Critics of the jury do not seek to abolish it; rather, they realise its limitations and seek to improve the way the criminal justice system operates.’

Discuss.

OR

(b) ‘The measures taken to prevent miscarriages of justice have been a success.’

Discuss.

4. ‘Lawyers have had it too good for too long. We can no longer afford the luxury of the state providing legal aid. Market provision is the only other solution.’

Discuss.

5. ‘Judges are not politicians. To say that they must be representative of society, misunderstands their essential role.’

Discuss.

6. ‘Precedent requires a hierarchy of courts and respect by lower courts for the decisions of higher courts. These principles have stood the test of time and should not be interfered with in any way.’

Discuss.

7. ‘Bringing the common law test for bias into line with European Human Rights law, shows that the common law takes fair trial rights seriously.’

Discuss.
The (fictitious) Police Powers, Covert Operations and Surveillance Act 2010 reads as follows:

‘1 No police officer should counsel, incite or procure the commission of a crime.

2 (1) Where a police officer acting covertly gives the police information about the intention of others to commit a crime in which he intends that he shall play a part, his participation should be allowed to continue only where:

(a) he does not actively engage in planning and committing the crime;

(b) he intends to play only a minor role;

(c) his participation is essential to enable the police to frustrate the objectives of the principal criminals and to arrest them (albeit for lesser offences) before injury is done to any person or serious damage to property; and

(d) he is instructed that he must on no account suggest to others that they should commit offences or encourage them to do so.

3 If a police officer acting covertly breaches sections 1 to 2 he may be liable to prosecution on the same terms as others who participated in the crime.

4 If a police officer breaches sections 1 to 2 and as a consequence crimes are committed by another the Crown Prosecution Service may refrain from or discontinue prosecution. In deciding whether to prosecute or discontinue prosecution the public interest will be the overriding factor. In determining the public interest, the Crown Prosecution Service will take into account (i) the seriousness of the crime; (ii) the difficulties involved in the covert operation; (iii) whether it is likely that no crime would have occurred without the police officer’s involvement; and (iv) the effect on any future prosecutions if prosecution was not engaged in.’

You act for the Crown Prosecution Service. Write a memorandum outlining arguments for and against prosecution in the following situations for both the police officer involved and the persons arrested.

(a) Police officer A has infiltrated an anarchist group who are planning to kidnap a member of the royal family. A copies extensive documentation providing details of the group’s plans including records of their discussions. He claims to have contacts with dealers of high quality weapons and leads B and C, members of the anarchist group, to a pre-arranged location where he tells them they will meet a man who will supply the weapons. When they arrive, B and C are arrested. A had not made any arrangements for B and C to buy weapons.
(b) Police officer D has been working under cover for two years and has assumed the identity of a violent criminal in order to infiltrate a criminal gang. He has been helping gang members to plan a sophisticated robbery whilst providing information to the police. While the planned robbery is taking place, a security guard is shot and killed. D drives the get away car. The police arrest gang members.

(c) Police officer F has assumed the identity of a student protestor, in order to infiltrate the Student Movement protesting against the privatisation of Universities. The Movement intends to organise a series of street protests, and they inform the police of this matter. Officer F seduces G, an executive council member of the Student Movement. With the intention of getting G to speak more freely, F supplies G with cannabis (a prohibited drug) and encourages her to smoke it (G has not previously smoked cannabis). When the demonstration takes place, the police stop and search G and find she is carrying cannabis. G is arrested for possession of a prohibited drug.

END OF PAPER