Common Law Reasoning and Institutions

Tuesday 20 May 2014: 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, TWO from the SEVEN questions in Part B and the COMPULSORY question in Part C.

NOTE: Candidates may detach the sections of the Identity Documents Act 2010 from pages 6 to 12 of this question paper for ease of reference in answering Question 9.

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

Candidates must answer this **COMPULSORY** question.

1. (a) What are the key facts and legal issues of *Rottman*?  
   (5 marks)

   (b) According to Lord Hope (dissenting) why was there a breach of Article 8 in this case?  
   (5 marks)

   (c) Summarise Lord Hutton’s discussion of the nature and extent of the common law powers to search Rottman’s premises and why they continued in force after the 1984 PACE.  
   (10 marks)

   (d) ‘Under the common law the police had power, after arresting a person in his house or in the grounds of his house, to search the house and seize articles which they reasonably believed to be material evidence in relation to the crime for which they had arrested that person. Notwithstanding the incremental development of this power over the years, the principle is not wide enough to cover the search of the flat where Hewitson was some two hours prior to his arrest in a nearby road. The objective of the common law is not only the obtaining and preservation of evidence but also the protection of a person’s private property from arbitrary invasion or intrusion, an objective reinforced by Art.8 of the European Convention on Human Rights. It would therefore be a substantial leap, rather than an incremental development of the common law, to allow the police such wide powers of search following arrest.’ *Hewitson v Chief Constable of Dorset* [2003] EWHC 3296 (Admin) Jackson J (quotation modified).

   What is Jackson J’s understanding of the scope and limits of common law powers to search and seize evidence in the paragraph above?  
   (5 marks)
PART B

Candidates must answer TWO questions in this section.

2. 'Due process can be understood as requiring “equal protection of law” to all men and women.'
   Discuss.

3. 'Judges are law makers, but their powers are limited: this fundamental idea underlies the doctrine of precedent.'
   Discuss.

4. 'Given the impact of so many recent legal developments in statutory interpretation, it would not be surprising to find some degree of dispute over the precise constitution of legitimate techniques. However, this can exist alongside a more or less settled understanding of the fundamental orientation of the practice.' (Gearey et al.)
   Discuss.

5. 'My thesis is that judges in the UK [are] necessarily conservative and illiberal.' (J.A.G. Griffith.)
   Discuss.

6. 'Civil justice must balance the demands of justice, and the requirement that the civil justice system is efficient. With the increasing emphasis on ADR we are in danger of losing the very real benefits to the parties and public alike that court determination of disputes brings.'
   Discuss.

7. 'A legitimate criminal justice system requires the public perception that policing is carried out fairly. This is more important than whether policing is effective.'
   Discuss.
8. EITHER

(a) ‘Whilst all might agree that the integrity of the court requires that a judge is not biased, problems arise with the actual definition of bias.’

Discuss.

OR

(b) ‘Dispensing with trial by jury would severely compromise the principles of the criminal trial.’

Discuss with reference to the Criminal Justice Act 2003.
PART C

Candidates must answer this **COMPULSORY** question.

9. (a) In November 2006, Alan was issued with an identity card which he still has.

Explain to Alan how sections 1 to 3 of the Identity Documents Act 2010 have changed the law and whether his card is still valid. Would it matter that Alan no longer lives at his registered address in the UK?

(5 marks)

(b) Chris asks Dave to obtain a library card in his (Chris’s) name and Dave agrees. Chris gives Dave his passport, as proof of ID is required to open an account with the library. When Dave takes the passport to the library, the librarian refuses to open an account and explains to the chief librarian that she feels that something suspicious is going on. The chief librarian alerts the police who arrest Dave and Chris. The passport turns out to be a forgery.

Explain to Dave, with reference to the extracts from the statute reproduced below what possible charges he might face under the Act, and, if he is found guilty, what kind of sentence he might expect.

(10 marks)

(c) Ethan has just failed his driving test and has been refused a driving licence. He goes online and downloads a picture of a UK driving licence which he then digitally alters using computer software so that his name appears on the licence. He then uses the driving licence to try to get served alcohol in a bar. The bar manager alerts the police.

With reference to the extracts from the statute reproduced below, advise Ethan of possible charges under the Identity Documents Act 2010 Act and any sentence he might receive if found guilty.

(10 marks)

END OF PAPER
Identity Documents Act 2010

2010 CHAPTER 40

An Act to make provision for and in connection with the repeal of the Identity Cards Act 2006. [21st December 2010]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Repeal of Identity Cards Act 2006

1

Repeal of Identity Cards Act 2006

(1) The Identity Cards Act 2006 is repealed.

(2) But—

(a) sections 25 and 26 of that Act (possession of false identity documents etc), and

(b) section 38 of that Act (verifying information provided with passport applications etc), are re-enacted by this Act (with consequential amendments and, in the case of section 38, also with minor amendments).

(3) In addition, the amendment of section 1 of the Consular Fees Act 1980 made by section 36 of the Identity Cards Act 2006 continues to have effect subject to a consequential amendment (see paragraph 2 of the Schedule to this Act).

2

Cancellation of ID cards etc

(1) No ID cards are to be issued by the Secretary of State at any time on or after the day on which this Act is passed.
(2) All ID cards that are valid immediately before that day are to be treated as cancelled by the Secretary of State at the end of the period of one month beginning with that day.

(3) As soon as reasonably practicable after that day, the Secretary of State must send a letter to every cardholder—
   (a) informing the cardholder that the cardholder’s ID card is to be treated as cancelled as mentioned in subsection (2), and
   (b) providing the cardholder with such information about the consequences of its cancellation as the Secretary of State considers appropriate.

(4) A letter under subsection (3) must be sent to the address recorded (at the time it is sent) in the National Identity Register as the address of the cardholder’s principal place of residence in the United Kingdom.

(5) For the purposes of this section a person is a “cardholder” if—
   (a) an ID card has been issued to the person, and
   (b) the ID card is valid immediately before the day on which this Act is passed.

(6) In this section “ID card” has the same meaning as in the Identity Cards Act 2006.

3 Destruction of information recorded in National Identity Register

The Secretary of State must ensure that all the information recorded in the National Identity Register is destroyed before the end of the period of two months beginning with the day on which this Act is passed.

4 False identity documents etc

4 Possession of false identity documents etc with improper intention

(1) It is an offence for a person (“P”) with an improper intention to have in P’s possession or under P’s control—
   (a) an identity document that is false and that P knows or believes to be false,
   (b) an identity document that was improperly obtained and that P knows or believes to have been improperly obtained, or
   (c) an identity document that relates to someone else.

(2) Each of the following is an improper intention—
   (a) the intention of using the document for establishing personal information about P;
   (b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about P or anyone else.
(3) In subsection (2)(b) the reference to P or anyone else does not include, in the case of a document within subsection (1)(c), the individual to whom it relates.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

5 Apparatus designed or adapted for the making of false identity documents etc

(1) It is an offence for a person ("P") with the prohibited intention to make or to have in P's possession or under P's control—
   (a) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or
   (b) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

(2) The prohibited intention is the intention—
   (a) that P or another will make a false identity document, and
   (b) that the document will be used by somebody for establishing, ascertaining or verifying personal information about a person.

(3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

6 Possession of false identity documents etc without reasonable excuse

(1) It is an offence for a person ("P"), without reasonable excuse, to have in P's possession or under P's control—
   (a) an identity document that is false,
   (b) an identity document that was improperly obtained,
   (c) an identity document that relates to someone else,
   (d) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or
   (e) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

(2) A person guilty of an offence under this section is liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), or
   (b) on summary conviction, to imprisonment for a term not exceeding the maximum period or a fine not exceeding the statutory maximum (or both).

(3) In subsection (2)(b) “the maximum period” means—
   (a) in England and Wales or Scotland, 12 months, and
(b) in Northern Ireland, 6 months.

(4) In subsection (3)(a) the reference to 12 months in England and Wales is to be read, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, as a reference to 6 months.

7 Meaning of “identity document”

(1) For the purposes of sections 4 to 6 “identity document” means any document that is or purports to be—
   (a) an immigration document,
   (b) a United Kingdom passport (within the meaning of the Immigration Act 1971),
   (c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation,
   (d) a document that can be used (in some or all circumstances) instead of a passport,
   (e) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic 1988 or under Part 2 of the Road Traffic (Northern Ireland) Order 1981, or
   (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.

(2) In subsection (1)(a) “immigration document” means—
   (a) a document used for confirming the right of a person under the EU Treaties in respect of entry or residence in the United Kingdom,
   (b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom, or
   (c) a registration card (within the meaning of section 26A of the Immigration Act 1971).

(3) In subsection (2)(b) “immigration functions” means functions under the Immigration Acts (within the meaning of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).

(4) References in subsection (1) to the issue of a document include its renewal, replacement or re-issue (with or without modifications).

(5) In this section “document” includes a stamp or label.

(6) The Secretary of State may by order amend the definition of “identity document”.

8 Meaning of “personal information”

(1) For the purposes of sections 4 and 5 “personal information”, in relation to an individual (“A”), means—
   (a) A’s full name,
   (b) other names by which A is or has previously been known,
   (c) A’s gender,
   (d) A’s date and place of birth,
(e) external characteristics of A that are capable of being used for identifying A,
(f) the address of A’s principal place of residence in the United Kingdom,
(g) the address of every other place in the United Kingdom or elsewhere where A has a place of residence,
(h) where in the United Kingdom and elsewhere A has previously been resident,
(i) the times at which A was resident at different places in the United Kingdom or elsewhere,
(j) A’s current residential status,
(k) residential statuses previously held by A, and
(l) information about numbers allocated to A for identification purposes and about the documents (including stamps or labels) to which they relate.

(2) In subsection (1) “residential status” means—
(a) A’s nationality,
(b) A’s entitlement to remain in the United Kingdom, and
(c) if that entitlement derives from a grant of leave to enter or remain in the United Kingdom, the terms and conditions of that leave.

9 Other definitions

(1) “Apparatus” includes any equipment, machinery or device and any wire or cable, together with any software used with it.

(2) In relation to England and Wales and Northern Ireland, an identity document is “false” only if it is false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981 (see section 9(1)).

(3) An identity document was “improperly obtained” if—
(a) false information was provided in, or in connection with, the application for its issue to the person who issued it, or
(b) false information was provided in, or in connection with, an application for its modification to a person entitled to modify it.

(4) In subsection (3)—
(a) “false” information includes information containing any inaccuracy or omission that results in a tendency to mislead,
(b) “information” includes documents (including stamps and labels) and records, and
(c) the “issue” of a document includes its renewal, replacement or re-issue (with or without modifications).

(5) References to the making of a false identity document include the modification of an identity document so that it becomes false.

(6) This section applies for the purposes of sections 4 to 6.
Verification of information

10 Verifying information provided with passport applications etc

(1) This section applies where it appears to the Secretary of State that a person within subsection (3) may have information that could be used—
(a) for verifying information provided to the Secretary of State for the purposes of, or in connection with, an application for the issue of a passport, or
(b) for determining whether to withdraw an individual’s passport.

(2) For the purpose of making the verification or determination mentioned in subsection (1)(a) or (b), the Secretary of State may require the person within subsection (3) to provide the Secretary of State with the information by a date specified in the requirement.

(3) The persons referred to in subsection (1) are—
(a) a Minister of the Crown,
(b) a government department,
(c) a Northern Ireland department,
(d) the Welsh Ministers,
(e) the Registrar General for England and Wales,
(f) the Registrar General of Births, Deaths and Marriages for Scotland,
(g) the Registrar General of Births and Deaths in Northern Ireland,
(h) a qualifying credit reference agency, and
(i) any other person specified for the purposes of this section by an order made by the Secretary of State.

(4) A credit reference agency is “qualifying” if, at the time a requirement is imposed, the agency is acting for the purposes of a contract for the provision to the Secretary of State of information that could be used as mentioned in subsection (1)(a) or (b).

(5) A requirement imposed under this section on a qualifying credit reference agency is enforceable in civil proceedings for—
(a) an injunction,
(b) in Scotland, specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
(c) any other appropriate remedy or relief.

(6) The persons who may be specified under subsection (3)(i) include any person who carries out a function that—
(a) is conferred by or under an enactment (whenever passed or made), and
(b) falls to be carried out on behalf of the Crown.

(7) An order under subsection (3)(i) may provide that where a requirement is imposed under this section on the person specified in the order, the duty to comply with the requirement is enforceable as mentioned in subsection (5).

(8) In a case within subsection (1)(a) where a passport is issued, information provided in accordance with this section must be destroyed no later than 28 days after the passport is issued.
(9) In a case within subsection (1)(b) where a passport is not withdrawn, information provided in accordance with this section must be destroyed no later than 28 days after the determination is made not to withdraw the passport.

(10) Subsections (8) and (9) do not apply in a case where it appears to the Secretary of State to be desirable to retain the information for the purpose of—
(a) preventing or detecting crime, or
(b) apprehending or prosecuting offenders.

(11) The Secretary of State may make payments to a person providing information in accordance with this section in respect of the provision of the information.

(12) In this section—
(a) “information” includes documents (including stamps and labels) and records, and
(b) the “issue” of a document includes its renewal, replacement or re-issue (with or without modifications).