



SCHOOL OF LAW

COURSE NAME: Public Law II

COURSE NO: LA 208

TIME ALLOWED: Three (3) hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Six (6)

NUMBER OF QUESTIONS ON PAPER: Six (6)

NUMBER OF QUESTIONS TO BE ANSWERED: Four (4)

MARK ALLOCATED FOR EACH QUESTION: Equal

TOTAL MARKS: Fifty percent (50%) of result.

MATERIALS PERMITTED IN EXAMINATION ROOM:

Unmarked LA 208 Readers. NOT Course Books

SPECIAL INSTRUCTIONS

1. There are three Parts in this examination. Part A, Part B, and Part C. There are two questions in each part. THE TWO QUESTIONS (QUESTION 1 AND QUESTION 2) IN PART A ARE COMPULSORY. BOTH QUESTIONS MUST BE ANSWERED. THERE ARE TWO QUESTIONS EACH IN PART B AND PART C. ANSWER ONLY ONE (1) QUESTION FROM THESE PARTS (PART B AND PART C)
2. This examination constitute 50% of the course. You must pass the examination (i.e. you must obtain a minimum of 25 marks out of 50) to pass the course.
3. THIS EXAMINATION PAPER MUST NOT BE TAKEN OUT OF THE EXAMINATION ROOM.

PART A

There are two questions in this Part. BOTH QUESTIONS MUST BE ANSWERED.

Question 1.

THIS QUESTION MUST BE ANSWERED.

Give brief answers to the questions below. Cite relevant administrative law principles and, if appropriate, case laws in answering the questions. Write at least three but no more than nine sentences for each sub-question. The marks allotted to each sub-question is indicated in brackets at the end of each sub-question.

Assume the following facts:

- (i) Phathone is a crook. He was convicted of forging a signature on a bank cheque and of obtaining money fraudulently. Later Phathone discovered that the detective who the police sent to investigate Phathone has himself been previously convicted of forgery and that the detective did not reveal this to the court which convicted Phathone. Can Phathone apply for judicial review and on what grounds? Will the higher court quash Phathone's conviction for forgery? Why or why not? Give brief reasons for your answer. (4 marks)
- (ii) Assume that Phathone has been convicted of a homosexual offence in a USP country under whose law engaging in homosexual acts is a criminal offence. Assume also that the judge who tried Phathone said during the trial that "I hate homosexuals. They are immoral people who has no place in our country." Is there any ground for Phathone to apply for judicial review based on the judge's comment? (2 marks)
- (iii) Phathone appealed his conviction to the High Court. Three judges of the High Court unanimously upheld Phathone's conviction. One of the three judges who upheld Phathone's conviction is the elder brother of the lower court judge who had convicted Phathone. What are the possible administrative laws issues that could be involved in such a situation? (2 marks)
- (iv) Assume that Phathone is a citizen of the United Kingdom (UK) and that he is a "self-declared" homosexual. (Assume that "private homosexual conduct" among consenting males is NOT a criminal offence in the UK.) Assume also that Phathone's application to serve in the armed forces of the UK has been rejected on the grounds that he is a homosexual. On what possible administrative law grounds – if any- could Phathone apply for judicial review? What are the writs that Phathone can possibly apply for? Based on previous case law in the United Kingdom do you think that Phathone's application will succeed? Would your answer be any different if the British Parliament has passed legislation stating that "known homosexuals" shall not be admitted into the British armed forces'? Give reasons for your answers. (5 marks)
- (v) Assume that while in prison for conviction a homosexual offence in a USP country Phathone was dissatisfied with the actions taken by the Prison Disciplinary Board. Assume that the USP country follows the case laws of the United Kingdom including that of the judicial committee of the House of Lords. Can Phathone apply for judicial review of the Prison Disciplinary Board's decision? Why or why not? Would your answer be different if

- Phathone has made such an application prior to 1985 in the UK? Give (brief) reasons for your answer (5 marks)
- (vi) Assume that while in prison in the year 2001 in the United Kingdom for a forgery offence Phathone was displeased with the decision of the Prison Disciplinary Board regarding the refusal of the Board to allow monthly "conjugal visits" from his male homosexual partner. Assume also that the Prison authorities have, as a "test case", chosen one male "model prisoner" who have behaved well in the previous month to allow a monthly "conjugal visit" (that is the chosen "model" prisoner's wife can visit and stayed with the prisoner for a night in privacy in the prison). Assume that Phathone's application to have his male partner for a monthly conjugal visit was denied on the grounds that (a) Phathone was not a model prisoner (b) the "experiment scheme" of allowing monthly conjugal visits to certain model prisoners applies only to heterosexual couples and not homosexual ones. Can Phathone apply for judicial review of the Board's decision and if so on what grounds? Is Phathone's application for judicial review likely to succeed? Give reasons for your answer. (7 marks)

In your answers, refer to legal principles, decided cases and concisely give your views and analysis with reasoned arguments.

Question 2

THIS QUESTION MUST BE ANSWERED.

*The "Pinochet II" ("Pinochet 2") case decided by the judicial committee of the House of Lords of the United Kingdom on 15 January 1999 quashed the decision of the High Court of England on the grounds that the High Court has taken into account "irrelevant considerations" into account when it decided that Senator Pinochet of Chile was entitled to "sovereign immunity" of British courts since he was an "alien" in the United Kingdom. In the *O'Reilly v Mackman* decision the Judicial Committee of the House of Lords reaffirmed in full and without amendment the dictum of Lord Atkin in the *Rex v Electricity Commissioner* (1924) case concerning the issuance of writs. The case of *Ridge v Baldwin* (1963) decided to what extent (if any) would the military tribunals authorities can dispense the requirements of natural justice when a country is under martial law.*

Carefully comment on and discuss the above statement. You should define and elaborate with reference to legal principles what all the key words and phrases (such as those of "irrelevant considerations", "sovereign immunity", "writs", "military tribunals", "marital law authorities" "Atkin test" mean in the above statement and how some of these administrative law concepts are applied by courts *as well as on the factual correctness of the above statements*. Briefly mention only the *ratio decidendi* of the above cases and do not give or copy from the Readers long narration of the facts and decisions of the above case. Your task is to critically comment on the above statements and to analyse the main administrative principles of the above cases as well as some of terms mentioned in the above cases.

(25 marks)

PART B

There are two questions in this Part. Answer only ONE question from this Part.

Question 3

- (a) What do you understand by the phrase "narrow interpretation of the law" in "privative clauses"? Give brief illustrations or examples. (4 marks)
- (b) What is a writ of *quo warranto*? What are "martial law authorities"? Why is it that the writ of *quo warranto* will not ordinarily apply to Head of States and martial law authorities? What are the exceptions (in terms of constitutional provisions and case law) to the above statement that the authority of the above two categories cannot be challenged? (5 marks)
- (c) What do you understand by the term that "a delegate may not delegate". In what administrative law context is the above statement relevant? Briefly explain and mention the possible exceptions to the above statement. Give relevant case examples if appropriate. (5 marks)
- (d) Briefly explain the difference between "likelihood of bias", "actual bias" and "appearance of bias". To which particular category of "bias" among the above three would the statement "justice must not only be done but must seem to be done" be particularly applicable? Give reasons for your answer. (5 marks)
- (e) Briefly explain the difference between (i) public and private duties (ii) prerogative powers and actions taken by an unlawful holder of office. (5 marks)

Question 4

Assume for the purposes of this question that

Phathone is the Director of a Church-based Christian charity organization *Charity Pacific* which is located in a USP country. The main purpose of the *Charity Pacific* is to collect charitable contributions from Churches, and other donations and redistribute them to other organizations that do social work especially among the "street children". The memorandum of Association of *Charity Pacific* states that

A new Director of Charity Pacific must be elected every year by the executive committee members in an annual general meeting. Seventy Percent (70%) of the executive committee members must be present in the meeting before the vote for a new director takes place at the annual general meeting. There must be two candidates for election. The current Director shall be ineligible for re-election. When 70% of the members of the Executive Committee are present and voting the person who got the majority of votes shall be the new Director.

At the annual general meeting of *Charity Pacific* out of twenty members, twelve (12) attended the general meeting. Two candidates Maya and Botani stood for the election of Director. After the voting Maya and Botani were "tied" at six votes each. Phathone stated that he would, as Director, exercise his voting right twice and voted for Botani. Botani was declared to be the new director. (There is no provision in the Memorandum of Association

of Charity Pacific regarding “tie votes” or the Director “voting twice”.) Maya was displeased with Phathone’s action and have consulted you as to what actions or “remedies” she could take under the principles of judicial review of administrative action.

- (a) Advise Maya. Refer to relevant administrative law principles and case laws if appropriate (8 marks)
- (b) Would your answer be any different if Phathone were a director of a private trust for the purposes and the trust deed have identical provisions regarding the election of a director of that trust. Give reasons for your answer. (4 marks)
- (c) Would your answer be any different if Phathone were a director of a government body, The Export-Import Board that was established by legislation with identical provisions? Give reasons for your answer. (4 marks)
- (d) Would your answer be any different if Phathone in situation (c) as Director of the Export-Import Board has told Maya in front of two witnesses and just before the meeting started that “You certainly would not get my vote; though I was your first boyfriend you ‘betrayed’ me and consented to your ‘arranged marriage’ with your husband. I have not forgotten that”. Give reasons for your answer. (4 marks)
- (e) Would your answer be different if in situation (c) in the by-laws establishing the Export-Import Board it is stated that “The decision of the Executive Committee of the Export-Import Board shall be final and conclusive and shall not be questioned in any court of law”. Give reasons for your answer. (5 marks)

In your answers, refer to legal principles, decided cases and concisely give your views and analysis with reasoned arguments.

(25 marks)

PART C.

There are two questions in Part C. Answer only ONE question from this Part.

Question 5

Briefly define, compare and if necessary contrast the following (Write no less than three and no more than nine sentences for each sub-question)

- (a) Unauthorised process and Lack of jurisdiction
- (b) Collateral challenge and Procedural Invalidity
- (c) Right to be consulted and right to be notified
- (d) Application of the rule in *Anisminic* to local authorities and Central Government
- (e) Prohibition and Injunction

(25 marks)

Question 6

Briefly define, compare and if necessary contrast the following. (Write no less than three and no more than nine sentences for each sub-question.)

- (a) Error of law on the face of the record and jurisdictional error
- (b) Legislature and Executive
- (c) *Carltona* Principle and *Certiorari*
- (d) *Nemo iudex in causa sua* and no certiorari clause
- (e) Subordinate Court and Substantive Invalidity

(25 marks)

END OF THE EXAMINATION PAPER.

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