

UNIVERSITY OF BOLTON
BOLTON LAW SCHOOL
LAW PATHWAYS
SEMESTER 1 EXAMINATION 2018/19
HUMAN RIGHTS LAW
LAW5006/LAW5106

DATE: Friday 18 January 2019

TIME: 2.00 – 4.00

INSTRUCTIONS TO CANDIDATES:

There are 4 questions on this paper.

Answer 2 questions.

All questions carry equal marks.

Candidates are permitted to take into the examination a clean non-annotated copy of a Human Rights Law statute book or a copy of the ECHR.

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1. What is the difference between absolute and conditional human rights and is that distinction clear?

2. Adam, a homosexual prisoner, has been exposed to a number of acts of intimidation and bullying by his fellow heterosexual inmates and complains about this. He asks to be placed in a cell with other homosexuals for safety reasons. However, the result is that he is placed in solitary confinement for more than 8 months in total. This has caused him to suffer both mentally and physically and he feels as though he has been stripped of his dignity. In particular, he struggles with the fact that his 7 sq. m. cell is fitted with a bed and toilets but has no washbasin, is very dirty and poorly lit. He claims that this type of cell is usually used for solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape. The applicant has been deprived of any contact with other inmates and social activities. He has no access to outdoor exercise and is allowed out only to see his lawyer or to attend hearings. **With reference to the ECHR and case law from the ECtHR, discuss any human rights violations.**

3. Bethany, a United Kingdom national, suffers from severe autism. She is unable to speak, her level of understanding is limited, and she lacks the ability to consent or refuse treatment. For over thirty years she had been cared for in Cedarwood Hospital as an in-patient at the Intensive Behavioural Unit after which time she has been entrusted to paid care-takers, Mr. and Mrs. D., with whom she successfully has resided from then on. She has been attending a day-care center run by the local authority and was present there when she became particularly agitated, engaging in self-harming behaviour. Her care-takers could not be reached and she was admitted as an in-patient at the Cedarwood emergency unit. According to an attending doctor, Bethany was compliant and did not resist admission. Personnel claimed they were repeatedly unable to contact Bethany's care-takers. Bethany continued to show signs of escalated behavioral problems and personnel discouraged visits by her carers, as it risked causing them and her distress. Hospital personnel have now come to the conclusion that Bethany, as well as being on the autism spectrum, suffers from a mood disorder, and note that her discharge would be against medical opinion.

Question 3 continued over the page

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Question 3 continued

Mr. and Mrs. D have made repeated efforts during the course of the circumstances to visit Bethany, and expressed concerns to staff about her care and treatment. Ultimately, they challenged the continued detention Bethany, however, the House of Lords has held by a 3:2 majority that Bethany was not detained and that s.131 Mental Health Act allowed her to be admitted and treated in her best interests under the common law doctrine of necessity.

With reference to the ECHR and case law from the ECtHR, discuss any human rights violations.

4. With respect to the role of the courts in the protection of human rights, what constitutional difficulties have been highlighted by the passing and implementation of the Human Rights Act 1998? In your opinion, are the courts' powers under the Act "unconstitutional"?

END OF QUESTIONS