

Candidate Name

Candidate Number

Centre Name

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Paper 2: The English Legal System

For Examination December 2023

(1 hour 30 minutes)

You must answer on the enclosed answer booklet.

You will need: Answer booklet (enclosed)

INSTRUCTIONS

- Answer 5 questions in total.
- You should answer all four questions in Section A.
- *Note: Missing parts of the approved judgement, or knowledge of the same, is **NOT** required to answer any of the questions in Section A.*
- You should answer **one** question **only** from section B.
- You should spend no more than 45 minutes on either section.
- Your answers should be supported by references to relevant instruments and/or authority. Full case citations are not required. A partial reference to the title and/or a brief description of facts will be sufficient.
- Follow the instructions on the front cover of the answer booklet. If you need additional answer paper, ask the invigilator for a continuation booklet.

INFORMATION

- The total mark for this paper is 75.
- The number of marks for each question or part question is shown in brackets []

A. Criminalising a way of life?

Public sexual harassment is a form of illegal discrimination under the **Equality Act 2010**. This means that people are legally protected from sexual harassment in certain places – for example, at work, on transport and at schools, colleges and universities. So, if sexual harassment does happen in these places, victims have the right to take action to find a solution. This could include making a simple claim in the local civil court for **damages** or an **injunction**. An award of **damages** by the District or Circuit Judge may include something for injured feelings (even if it includes anything on any other basis).

Such harassment will be made a specific offence through government-backed legislation returning to Parliament. The introduction of a specific offence will encourage women to report to the police, as well as showing the severity of the crime. Under **section 4A of the Public Order Act 1986** (causing someone with intent harassment, alarm or distress), person guilty of an offence is liable on **summary conviction** to imprisonment for a term not exceeding 6 months or a **fine** not exceeding level 5 on the standard scale or both. The change will provide that if a person did the offence because of the victim's sex, then the offender can get a higher maximum sentence of two years.

B. Extract from an approved judgement (paragraphs 1-4, 37 and 64-65 only)

IN THE HIGH COURT OF JUSTICE (QUEEN'S BENCH DIVISION)

Before: HIS HONOUR JUDGE SIMON (Sitting as a Judge of the High Court)

Introduction

1.The Claimants in these injunction proceedings are Thurrock Council (Thurrock) and Essex County Council (Essex). They are represented by Caroline Bolton and Natalie Pratt. On 24 April 2022 at an Out of Hours hearing without notice before Ritchie J, the Claimants applied for and obtained an interim injunction (the injunction). The injunction was made against 222 named Defendants and seven categories of persons unknown. The categories appear in the heading of this judgment as they appeared in the injunction.

3.The injunction in its present form contains 19 prohibitions, the specifics of which are discussed further below. In broad terms, they seek to prohibit what the Claimants argue are acts of public nuisance and/or trespass in the administrative areas for which Thurrock and Essex are responsible.

4.As a result of the breadth of issues and submissions in this case, it has been necessary to summarise, albeit in some detail, those submissions in the body of the judgment. I am grateful to Ms Bolton and Mr Simblet QC for their assistance with the complexities of the case.

...

paragraphs 5-36 are NOT provided

37.Mr Simblet made complaint under this head in relation notably to two aspects of the hearing before Ritchie J: first, the Claimants' reliance on *Ineos* [v. *Persons Unknown* (2019)] (HC) at first instance without referencing *Ineos* (CA) on appeal; and secondly the failure of the Claimants to direct the judge to the correct test for granting an injunction under s12(3) HRA, but rather suggesting the standard – and lesser – threshold test for granting injunctions applied.

...

[paragraphs 38-63 are NOT provided]

64.This checklist must now be considered with the additional gloss on requirement 4) provided by Leggatt LJ (who was a member of the Court in *Ineos (CA)*) in *Cuadrilla*:

“50.In the light of precedents which were not cited in the *Ineos* case but which have been drawn to our attention on the present appeal, I would enter a caveat in relation to the fourth of these requirements. While it is undoubtedly desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this cannot be regarded as an abs an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case. In both those cases the injunction was granted against a named person or persons. What, if any, difference it makes in this regard that the injunction is sought against unknown persons is a question which does not need to be decided on the present appeal but which may, as I understand, arise on a pending appeal from the decision of Nicklin J in *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (QB);and in these circumstances I express no opinion on the point.

In the *Ineos* case the judge had proceeded on the basis that the evidence adduced by the claimants of protests against other companies engaged in fracking (including *Cuadrilla*) would, if accepted at trial, be sufficient to show a real and imminent threat of trespass on the claimants' land, interference with the claimants' rights of passage to and from their land and interference with their supply chain. On that basis he granted an injunction in similar – although in some respects wider and more vaguely worded – terms to the Injunction granted in the present case.

65.The distinction to be drawn with *Ineos (CA)* and the present proceedings is that there is in my judgment detailed and reliable evidence from the Claimants to be drawn from past experience, the repetitive nature of the actions of a significant number of protesters already identified through arrests and the sufficiently real and immediate anticipated return to protest activity within Thurrock and Essex to justify granting interim injunctive relief.

....

The remaining paragraphs are NOT provided

Note: The missing parts of the approved judgement, or knowledge of the same, is NOT required.

PART A

Answer all questions in this section. You should spend no more than 45 minutes on this part of the test.

1.
 - (a) What court would hear the claims for damages under the Equality Act 2010 mentioned in reading A? [1 mark]
 - (b) What court would try the offences under the Public Order Act 1994 mentioned in reading A? [1 mark]
 - (c) Who would decide whether someone had committed an offence under the Public Order Act 1994? [2 marks]
 - (d) Suggest two advantages and two disadvantages of using juries in criminal matters. [4 marks]
 - (e) Apart from any mentioned in reading A, what types of non-custodial sentences would be available to a criminal court dealing with the proposed offence? [2 marks]
2.
 - (a) Reading A refers to both *injunctions* and *damages*. Explain the general meaning of both terms and distinguish *damages* from a *fine*. [4 marks]
 - (b) The defendant is found liable for harassment under the Equality Act 2010 and asks you to outline how they could appeal against the decision. Briefly outline the appeal process, including any risk involved. **NB You do NOT have to comment on the chances of any appeal being successful.** [6 marks]
3.
 - (a) Reading B refers to [2019] EWHC 2459. Explain how you would use all parts of these references to find the case in question. [1 mark]
 - (b) Explain how someone would be appointed to the position as a High Court Justice. [3 marks]
 - (c) Describe the judicial body of which the court in reading B is a part. [6 marks]
4.
 - (a) Reading B refers to legal professionals Caroline Bolton and Natalie Pratt. Which two types of legal professional would you expect to be representing defendants in the High Court? [2 marks]
 - (b) His Honour Judge Simon does not follow the decision of a superior court in *Ineos v. Persons Unknown*. Explain in legal terms why he is able to do this and the rules the judge needed to observe. [5 marks]
 - (c) Briefly discuss advantages and disadvantages of using lawyers to resolve legal disputes. [8 marks]

Answer ONE question only from this section. You should spend about 45 minutes on your answer.

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