

W 201 The Individual and the State

Exam questions on Manual 2

2009

QUESTION 5

Assume that Parliament has enacted the Recycling of Industrial Waste Act 2009 (fictitious) (“the Act”) with the aim of improving provision for the recycling of waste materials created by manufacturing industry. The Act created the Industrial Waste Agency (“IWA”), responsible for regulating the number and standard of recycling plants. Any business wishing to operate a recycling plant must apply to the IWA for a licence. The Act also requires publication of a notice of any application for a licence for a new recycling site both on the proposed site itself and in a local newspaper.

Greenco’s application for a licence has been refused by the IWA. No reasons for this decision were given. Greenco have found out that the chairman of the IWA panel which considered its application is married to the owner of Greenco’s largest rival.

Hasco recently applied to the IWA for a licence to operate a new recycling plant. The application was refused on the basis of the IWA’s policy of permitting only one recycling plant in any area. A small local company has been granted the licence instead. Hasco believes this company will be unable to meet the increasing demand for recycling from local businesses. Hasco has also borrowed heavily to invest in new plant and machinery specifically to meet the demands of the Act and is concerned at the level of interest payments.

The IWA has granted a licence to Ideo for a new recycling plant adjacent to a nature reserve. The Nature Conservation Trust (“NCT”), a group which campaigns on environmental issues, is concerned that although the notice was published in a local newspaper, it was not posted on the site and most users of the nature reserve were therefore unaware of the proposed recycling plant.

With respect to Greenco, Hasco and the NCT:

- (a) Consider whether each may make a claim for judicial review in respect of the decisions made by the IWA.**
- (b) Explain the likely grounds of challenge they may raise and their prospects of success; and**
- (c) On the assumption that their claims are successful, explain the remedies that each claimant should seek.**

QUESTION 4

A national daily newspaper, 'The Globe', publishes a report of a trial of a professional footballer, Leigh Thomas, who has been charged with assault occasioning actual bodily harm following a fight at a city centre nightclub. The majority of the newspaper article focuses on the prosecution case, with only two lines briefly summarising the arguments raised by the defence. The trial has yet to reach its conclusion, but the article concludes by recommending that the court should make an example of Leigh Thomas by giving him a lengthy prison sentence.

Explain the Convention Rights (under the European Convention on Human Rights) which are engaged when The Globe reports the evidence in the trial in such a way as to risk prejudicing the jury against Leigh Thomas. Consider how successfully UK law resolves any conflict between Convention Rights in such a case. (Note: you do not need to consider any common law offences.)