

THE CONSTITUTION IN 'SAFE' MODE:

IMPORTANT ENGLISH PUBLIC LAW CASES 2014-2015

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The common law and the HRA

Kennedy v Charity Commission [2014] UKSC 20, [2015] AC 455

A reminder that the HRA is not necessarily the first port of call: the common law is not an 'ossuary'.

(see too Lord Sumption's observations in *Pham (post)* at 108, and interesting observations in *MA v Secretary of State for Work & Pensions* [2013] EWHC 2213 at [51]-[53]; [2014] EWCA Civ 13, [2014] PTSR 584.)

The Impact of the EU Charter of Fundamental Rights: does it have direct effect, and if so, what is the effect of that?

Chester v Secretary of State for Justice [2013] UKSC 63; [2014] AC 271 at [72]-[76]

Lord Mance (obiter) if the Charter applied, relief would only be a generally phrased declaration: it would not disapply the whole scheme. Compliance with EU law would be a matter for parliament, subject to any possible *Francovich* claim for damages. In effect, depends whether *Marleasing* principles can apply. But what of

the primacy of EU law/inability to apply inconsistent domestic law? This may soon be a matter for decision.

applied *Benkharbouche v Bembassy of Sudan* [2015] EWCA Civ 33, [2015] 2 CMLR 20

and *Vidal-Hall* [2015] EWCA Civ 311 (application for permission to SC granted 28 July 2015).

The standard of review

Lord Carlile of Berriew v SSHD [2014] UKSC 60, [2014] 3 WLR 1404

Important observations on the margin of appreciation and the role of the court in determining justification for limiting Article 10: assessment of risk to national security a matter with which the court would be extremely diffident to interfere, even in context of a core democratic value of high priority

Pham v Secretary of State for the Home Department [2015] UKSC 19, [2015] 1 WLR 1591.

Are there different standards of review in EU/ECHR proportionality cases, and in domestic *Wednesbury* analysis concerning a decision of high importance? (Obiter) “improbable” that standard of review would differ according to whether it was

conducted under domestic principles or also by reference to a principle of proportionality derived from EU law.

The fourth limb of the 'Bank Mellat' test and deference:

R(Miranda) v SSHD [2014] EWHC 255 (Admin), [2014] 1 WLR 3140

Beghal v SSHD [2015] UKSC 49

Is there a division in the Supreme Court on scrutiny of rational link and proportionality of legitimate aim and means of pursuing it?

Gaughran v Chief Constable of the Police Service of Northern Ireland [2015] UKSC 11

(Lord Clark vs Lord Kerr – is establishing a reasonable relationship between a legitimate aim and means of achieving it enough or should the court undertake more rigorous scrutiny?)

and

Tigere v Secretary of State for Business [2015] UKSC 57

(3:2 split on degree of justification needed for a bright line rule).

... and to what and how does the 'manifestly without reasonable foundation' test apply?

Re Recovery of Medical Costs of Asbestos Disease (Wales) Bill [2015] UKSC 3

Implications of international law for domestic law

SG v Secretary of State for Work & Pensions [2015] UKSC [2015] UKSC 16, [2015]

WLR 1449

Caution needed about the 'implied' scope of one treaty in context of discrimination alleged on a different ground (see Lord Reed on relevance of the UN Convention on the Rights of the Child in a case concerning sex discrimination: paras 78 - 91; also repeating that the court will not interpret or apply unincorporated international treaties. But NB that this does not mean that an unincorporated treaty has no bearing on an argument advanced under the ECHR: per Lord Carnwarth at para 101-132. See also the vigorous and interesting dissent by Lord Kerr at 233-257 suggesting that article 3 of the UNCRC is *directly* enforceable in UK domestic law.

Public Sector Equality Duty

Hotak & Kanu v London Borough of Southwark [2014] UKSC 30 at [72]-[79], affirming the *Bracking* line of cases [2013] EWCA Civ 1345, [2014] EqLR 60.

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