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Chapter 2

Question 1

Note the decision of the Court of Appeal in *R (G) v Nottinghamshire Healthcare NHS Trust* 2009] EWCA Civ 795 where it was held that a ban on smoking in mental health units did not engage the inmates' article 8 rights. The hospital was a public institution and not the same as a private home. Supervision was intense and the degree to which a person could expect freedom to do as they pleased and engage in private activity would vary according to the nature of the accommodation in which they lived.

Question 4

See the Joint Committee on Human Rights 29th Report on Bill of Rights for the UK, available on www.publications.parliament.uk/pa/jt/jtrights.htm and the government's response, 19 January 2009:
http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/15/15.pdf

See also the Ministry of Justice's recent Green Paper: Rights and Responsibilities: developing our constitutional framework CM 7577, March 2009

Chapter 3

Question 5

The Grand Chamber delivered its judgment in *A v UK* on 19 February 2009. The Court held that there had been a breach of article 5(1) as the possibility of deportation proceedings making the deprivation lawful under paragraph (f) were not sufficiently imminent (*Chahal v UK*). The Court also held that there was no reason to disagree with the House of Lords on the lack of proportionality of the measures with respect to the legality of the derogation under article 15. There had also been a violation of article 5(4) because the lack of availability to the applicants and their lawyers of closed evidence meant that they were deprived of their right to effectively challenge the continued legality of that detention.

Question 6

In *EB v France*, 22 January 2008 the European Court held that there had been a violation of article 14 in conjunction with article 8 of the Convention when the applicant's request for adoption had been turned down on the grounds of the lack of paternal referent – the applicant was a homosexual living with another woman. The grounds for the refusal were found by the Court to be based implicitly and unreasonably on her homosexuality and as such prima facie in breach of article 14. Further, such grounds alone were not objectively justified as state law allowed applications from homosexuals.

Chapter 4

Questions 2 and 3

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See *R (Purdy) v DPP* [2009] UKHL 45 where the House of Lords overruled the Court of Appeal, who recognised that the decision of the House of Lords and that of the European Court in *Pretty* were clearly inconsistent, but nevertheless held that only in very exceptional circumstances would it override what would otherwise be the binding precedent of the House of Lords *(Kay* and *Price* applied). On appeal to the House of Lords their Lordships followed the ECtHR in *Pretty* in preference to the House of Lords in *Pretty v DPP*.

See also *AF v Secretary of State for the Home Department, The Times,* 11 June 2009, where the House of Lords held that the decision of the European Court in *A v UK* had to be followed in preference to the decision of their Lordships in *Re MB*, where there was any conflict with respect to the use of closed evidence in control order cases.

See *AS (Somalia) v Home Secretary* [2009] UKHL 32 where it was held that it was not possible to read down the plain words of s.85 of the Nationality, Immigration and Asylum Act 2002. That provision precluded an officer hearing an appeal against refusal of entry clearance from considering fresh evidence coming to light after the original decision. The House of Lords held that the words were unyielding and unequivocal and to read them down would cross the boundary between interpretation and amendment of the Act.

See the Joint Committee on Human Rights 29th Report on Bill of Rights for the UK, available on www.publications.parliament.uk/pa/jt/jtrights.htm and the government's response, 19 January 2009:
http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/15/15.pdf

See also the Ministry of Justice's recent Green Paper: Rights and Responsibilities: developing our constitutional framework CM 7577, March 2009

Chapter 5

Question 2

In *R (Al-Saadoon and Mufhdi) v Secretary of State for Defence* [2008] EWHC 3098 it was held that it was not unlawful for British troops to hand over two Iraqis to the Iraqi authorities to face a trial and the death penalty. Although the death penalty was outlawed in the UK it was not in breach of the Convention or international law and thus the UK authorities were obliged to hand over the individuals. The decision was upheld on appeal to the Court of Appeal: [2009] EWCA Civ 7 – article 1 of the ECHR was not engaged and there was insufficient evidence that international law prohibited executions by hanging because it was in violation of the prohibition of inhuman treatment. The case has been referred to the European Court of Human Rights (Application No 61498/08)

Question 3

In *Mitchell v Glasgow City Council* [2009] UKHL 11 it was held that there had been no violation of article 2 and the principle in *Osman v UK* when a man had been attacked and killed by his next door neighbour. The only previous act of violence had been 7 years ago and thus there was not a sufficient real threat or risk of the man's life.

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In *Savage v South Essex Partnership NHS Trust* [2008] UKHL 74 the House of Lords dismissed an appeal from the decision of the Court of Appeal ([2008] 1 WLR 1667) and held that the test in *Osman v UK* under article 2 applied to a health authority's obligation to prevent suicides of mental health patients. Such an obligation involved employing competent staff and adopting a system of work which would protect patients' lives. Article 2 also imposed an 'operational' obligation on health authorities to do all that could reasonably be expected to prevent a risk patient from committing suicide; this obligation only arose if the authorities knew or ought to have known that the patient was a real and immediate suicide risk and in such circumstances article 2 required them to do all that could reasonably be expected to prevent the patient from committing suicide and that priority be given to saving the patient's life.

In *R (JL) v Secretary of State for Justice* [2008] UKHL 68 it was held that the near suicide of a prisoner in custody which caused a potential for serious long term injury automatically triggered the state's obligation to hold an enhanced investigation. That duty could not be discharged by holding an internal investigation.

Question 4

In *R (Al-Saadoon and Mufhdi) v Secretary of State for Defence* [2008] EWHC 3098 it was held that it was not unlawful for British troops to hand over two Iraqis to the Iraqi authorities to face a trial and the death penalty. Although the death penalty was outlawed in the UK it was not in breach of the Convention or international law and thus the UK authorities were obliged to hand over the individuals. The decision was upheld on appeal to the Court of Appeal: [2009] EWCA Civ 7 – article 1 of the ECHR was not engaged and there was insufficient evidence that international law prohibited executions by hanging because it was in violation of the prohibition of inhuman treatment. The case has been referred to the European Court of Human Rights (Application No 61498/08)

Chapter 6

Question 1

In *Gafgen v Germany*, 30 June 2008 the European Court held that there had been a violation of article 3 when the applicant had been threatened with severe physical pain during interrogation, when the police were trying to locate a child abducted by the applicant. The Court found that if the threat had been carried out that would have constituted torture, but as the interrogation only lasted ten minutes and was done as a genuine attempt to save the child's life, the threats constituted inhuman treatment. The Court also found that the applicant was no longer a victim as the domestic courts had found the officers guilty and had excluded any resulting evidence at the trial. This was sufficient redress in a case where the applicant had been merely threatened with acts of violence.

Question 4

In *R (Bary and others) v Secretary for the Home Department* [2009] EWHC 2068 (Admin), it was held that there was no violation of article 3 when the claimants had been extradited to the USA to face charges of terrorism. The administrative measures applicable in the US together with the tough prison conditions did not cross the threshold. There were sufficient

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protective measures available to the claimants under US law to safeguard them against abuse. The importance of maintaining extradition in a case where a fugitive would not otherwise be tried and the importance of international co-operation were both factors that were highly important when determining whether the necessary threshold had been crossed.

In *Home Secretary v Nasseri* [2009] UKHL 23 the House of Lords held that there was no procedural obligation to investigate a breach of article 3, irrespective of whether a risk actually existed; the correct approach was to see if there had been a violation of article 3 on the merits, not to adjudicate on the decision-making process (*Begum* applied). Although the legislation created an irrebuttable presumption that certain countries were safe, that did not preclude the court from investigating a real risk of article 3 being violated for the purpose of declaring that provision incompatible with the Convention.

Chapter 7

Question 1

In *Austin v Commissioner of the Police of the Metropolis* [2009] UKHL 5 the House of Lords held that the police were entitled to detain protestors in a zone for up to 7 hours in order to deal with a breach of the peace. Their Lordships held that article 5 of the Convention was not engaged in the present case because the police action did not constitute a detention within that article. Whether a situation amounted to a deprivation of liberty was fact sensitive and depended on all the circumstances, including why the person's movement was restricted. The case law of the Convention did not expressly address this issue but a balancing exercise was inherent in cases such as *Guzzardi*.

Questions 1 and 2

The Grand Chamber delivered its judgment in *A v UK* on 19 February 2009. The Court held that there had been a breach of article 5(1) as the possibility of deportation proceedings making the deprivation lawful under paragraph (f) were not sufficiently imminent (*Chahal v UK*). The Court also held that there was no reason to disagree with the House of Lords on the lack of proportionality of the measures with respect to the legality of the derogation under article 15. There had also been a violation of article 5(4) because the lack of availability to the applicants and their lawyers of closed evidence meant that they were deprived of their right to effectively challenge the continued legality of that detention.

Questions 3 and 4

In *Al-Khawaja and Tahery v United Kingdom*, 20 January 2009 the European Court held that there had been a violation of article 6(1) and 6(3)(d) of the ECHR when witness statements from absent witnesses were read out at the applicants' trial. In one case the applicant had been charged with assault and convicted on one count when the complainant's statement, made before her death, was read out in court. In the other case the applicant was convicted on the basis of evidence provided by a sole witness who did not appear in court because of fear for his safety. In both cases the European Court held that the unfairness to the defendants not being able to question those witnesses and their statement could not be offset by any direction of caution made to the jury by the judge.

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I(n *R v Horncastle* [2009] EWCA Crim 964 it was held that provided hearsay evidence was reliable, and tested and assessed as such, there was no violation of article 6(3)(d) if a defendant was convicted solely or decisively on such evidence. The admissibility of evidence was for the national courts and the decision in *A-Khaawja* did not justify the court from departing from its previous decisions in this area.)

In *AV v Home Secretary* the House of Lords, relying on the recent decision of the European Court in *A v United Kingdom*, held that where closed evidence was relied on by the Secretary, the controlled person had to be given sufficient information about the case against him to enable him to give effective instructions to the special advocate. The House of Lords held that the decision in *A* made it clear that non disclosure could not go so far as to deny a person knowledge of the essence of the case against him; although in the interests of national security it might be acceptable not to disclose the source of evidence that founded the suspicion of involvement in terrorism.

Question 5

In *R v RGB* [2009] EWCA Civ 906 the Court of Appeal held that an order in 2003 extending a licence period to a sentence of imprisonment for an offence committed before October 1 1991did not amount to imposing a heavier penalty than was available at the time the offence was committed contrary to article 7 of the ECHR.

Chapter 8

Question 1

In *Secretary of State for Justice v James and Walker* [2009] UKHL 22. Their Lordships held that where a prisoner serving a protective sentence was, after the tariff period had expired, unable to demonstrate his safety for release, his continued detention was not unlawful under common law. Nor was it in breach of article 5 of the ECHR unless there had been a period of years without effective review. The prisoner's remedy was declaratory relief, not release, which would be in clear breach of the relevant legislation. Detention beyond the tariff was justified with respect to article 5 because the sentencing court had decided that that the prisoner would continue to be dangerous at the expiry of the tariff. Article 5(4) required no more than that the Parole Board speedily decide whether the prisoner continued to be lawfully detained and that would be the case unless and until it was satisfied as to his safety for release or unless so much time had elapsed that the causal link had been broken.

Questions 2 and 3

In *Szuluk v United Kingdom*, 2 June 2009 the European Court held that there had been a violation of article 8 when the prisoner's confidential medical correspondence relating to his terminal illness was opened and read by prison authorities. Such correspondence should be given equal protection to that of legal correspondence and there was no pressing need to depart from that principle in this case. The case overrules the Court of Appeal decision in *Szuluk*.

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See Ministry of Justice Second stage consultation document: Voting Rights of Convicted Prisoners within the United Kingdom, Consultation Paper CP6/09, April 82009. This outlines the government's initial proposals for prisoner enfranchisement in response to *Hirst v UK*. See Foster, Reluctantly Restoring Rights [2009] (3) HRLR 489.

In *R (AB) v Secretary of State for Justice* [2009] EWHC 2220 (Admin), it was held that the Secretary of State had violated article 8 by refusing to transfer a pre-operative transgender woman to a female prison. The Secretary had failed to consider the claimant's article 8 claims, which were clearly engaged by an interference with her personal autonomy, and had thus made a disproportionate decision. The risk arguments for refusing to transfer the prisoner were not clear or weighty enough to override her article 8 rights.

Chapter 9

Question 1

In *Onur v UK*, 17 February 2009, the European Court held that there had been no violation of article 8 when the applicant had been deported to back to his native Turkey after being convicted of serious property offences committed in the UK. Despite the applicant having lived in the UK for 19 years, and formed a relationship, and fathered a daughter, the offences were serious and he must have expected that he was liable for deportation. In addition the problems of re-location in Turkey were not exceptionally difficult.

In *A v Norway*, 9 April 2009 it was held that there had been a violation of article 8 when the applicant, a recently released prisoner, had been identified by newspapers as a suspect in a rape and murder investigation and who had brought an unsuccessful defamation action against the media. The Court held that the domestic courts had erred in dismissing his action and by finding that the press had acted in the public interest in publishing photographs and the allegations of guilt. The applicant had been persecuted at time of his potential rehabilitation and such stories had caused psychological and moral harm to his integrity.

In *Hachette Fipacchi Associes v France*, 23 July 2009 the European Court held that there had been a violation of article 10 when a newspaper had been fined for publishing a story about the famous singer Johnny Halliday's extravagant tastes, together with publicity and stage photographs of the singer. The Court noted that the photographs were already public, that the story was based on the singer's previous revelations about his lifestyle and that the story was not offensive. The domestic measure was thus disproportionate.

Question 2

In *R (Purdy) v DPP* [2009] UKHL 45, the House of Lords held that the claimant's article 8 rights were engaged (following the ECtHR in *Pretty*) and that the failure of the DPP to promulgate clear guidelines on prosecution policies was in breach of her right to private and family life. The lack of such guidelines offended the principles of foreseeability and accessibility inherent in article 8.

In *R (G) v Nottinghamshire Healthcare NHS Trust* 2009] EWCA Civ 795 where it was held that a ban on smoking in mental health units did not engage the inmates' article 8 rights.

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The hospital was a public institution and not the same as a private home. Supervision was intense and the degree to which a person could expect freedom to do as they pleased and engage in private activity would vary according to the nature of the accommodation in which they lived.

In *R (Wright and others) v Secretary of State for Health* [2009] UKHL 3 the House of Lords held that article 8 of the ECHR was violated when nurses had been placed on a provisional list which would prevent them from working as a carer with vulnerable adults. The House of Lords held that the powers under the Care Standards Act 2000 to prevent the employee form working in that field were potentially disproportionate and thus contrary to article 8(2) given the social stigma created by that listing. The provision was thus declared incompatible.

In *Wood v Commissioner of Police of the Metropolis* [2009] EWCA Civ 414, it was held that there had been a violation of article 8 when the police had taken photographs of the claimant whilst attending the AGM of a company who had been targeted by an anti-arms group of which the claimant was associated. Applying the principles in *S and Marper v UK* (retention of DNA samples) the Court of Appeal found that it was implied that these photographs would be retained and used and thus amounted to a sufficient intrusion into private life. Further, once it was evident that the claimant had committed no offence, the police had failed to show that the retention was necessary and proportionate.

Question 3

In *Re Mc E and others* [2009] UKHL it was held that the 2000 RIPA permitted the covert surveillance of legally privileged communications between lawyers and their clients notwithstanding the statutory right of people in custody to consult with their lawyers. The 2000 Act clearly intended to apply to all communications and thus override the common law and statutory protection (*ex parte Simms*). The House of Lords held that there was no absolute prohibition on such surveillance but that in the circumstances the surveillance had been disproportionate.

In *A v B* [2009] EWCA Civ 24 the Court of Appeal held that the Investigatory Powers Tribunal had exclusive jurisdiction to hear a challenge to the refusal of the Director of the Security Service to consent to the publication of a book detailing an employee's work for the service.

Question 4

In *Re Attorney General's Reference No 3 of 1999* [2009] UKHL 34 the House of Lords discharged an anonymity order relating to a defendant acquitted of rape. The defendant's right to privacy was outweighed by the broadcaster's right to freedom of expression. The House of Lords held that the defendant had an expectation of privacy because although the fact of acquittal was not private information, the fact that there had been a link between his DNA and the commission of the offence was personal information. Such information suggested he was guilty and his right to a fair trial and privacy engaged article 8. There was a legitimate reason for interference because it was in the public interest to make a programme about his acquittal and the removal of the double jeopardy rule; and equally in the public interest to name him in order to give credibility to the programme. The defendant's acquittal had already been in the public domain and the defendant could not

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complain that that as a result of the programme an application was made to retry him for that offence. Although there was a danger of trial by media, his right to privacy did not outweigh the public interest in freedom of expression. Further, the rape victim had waived anonymity and his name had been published since his acquittal. The reference sought by the AG should not place him in abetter position than he would have been had the issue about double jeopardy been settled in someone else's case.

In *Author of a Blog v Times Newspaper* [2009] EWHC 1358 QB it was held that the contributor to a 'blog' on a website – a serving police officer commenting on police practices – was not entitled to an injunction restraining the defendants from identifying him. This police officer who used 'blog' sites had no reasonable expectation of privacy as the suite was public. As opposed to cases where claimants had sought to suppress intimate and private information, in this case there was a significant public element in the information sought to be restricted. Alternatively there was a public interest in free speech outweighing any privacy interest. At full trial any right of privacy would be likely to be outweighed by the public interest in revealing that a particular police officer had been making the communications.

In *Re X (a Child)* 2009] EWHC 1728 Fam, an order was made excluding the media from attending residence and contact proceedings concerning the child of well-known public figures. Such an order was necessary to protect the privacy rights of the child and was not thus a disproportionate interference with the media's article 10 rights (*Re S (Publicity*) applied. Although cases concerning children of celebrities were not to be treated differently there would inevitably be more intense media coverage of such that would impact on the child's interests.

In *Re East Sussex Council and others* [2009] EWHC 395 (Admin) it was held that reporting restrictions, banning the press publishing photographs of three teenagers and a two-month old girl, was no longer viable as the images were now extensively in the public domain. (A story had been reported in the press relating to the paternity of the two month old girl and the results of subsequent DNA results). The continuation of the injunctions would have constituted a disproportionate interference with the media's attempts to clarify earlier misinformation relating to the paternity.

Question 5

See R (AB) v Secretary of State for Justice [2009] EWHC 2220 (Admin), where it was held that it was proper for the Secretary of State to consider the fact that a prisoner who had been granted a gender recognition certificate under s.9 of the Gender Recognition Act 2004, retained the physical attributes of a man for the purposes of deciding whether to transfer her to a female prison. On the facts the Secretary's decision was disproportionate.

Chapter 10

Question 1

In *Hachette and another v France*, 5 March 2009 the Court held that there had been no violation of article 10 when the applicant companies had been prosecuted for advertising cigarettes contrary to French law. There was now a common consensus accepting the

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need for regulating such advertising and incitement to smoke and the prosecutions and fines (10,000 Euros) was not disproportionate.

In *Demirel and Ates v Turkey*, 9 December 2008, the European Court held that there had been a violation of article 10 when the owner and editor of a newspaper had been prosecuted for publishing declarations of an illegal organisation (the PKK). In the Court's view the article – stating the response of a member of the PKK to government accusations - did not contain material that was likely to incite violence. The prosecution, fine, and closure of the paper were instigated purely because the article contained a statement of the organisation's views and was thus a disproportionate interference with press freedom and article 10.

In *Standard Verlags GMBH v Austria (No 2)*, 4 June 2009 it was held that there had been no violation of article 10 when the applicants had been fined for publishing an article reporting on rumours about the then Austrian President's marriage. The Court applied the principles in *Von Hannover* and found that the articles contained idle gossip and did not contribute to any debate of general interest.

In *Egeland and Hanseid v Norway*, judgment of the European Court 16 April 2009 it was held that there had been no violation of article 10 when two journalists had been prosecuted and fined for taking photographs of accused persons outside a court hearing without their consent, contrary to national law. The Court noted that the photographs had been taken without her consent and directly after she had been informed of her conviction for a triple murder; she was in tears and in great distress and thus at her most vulnerable, psychologically. The public interest in the photographs and the trial did not outweigh the woman's right to privacy and the interest in the fair administration of justice.

In *Recklos v Greece*, 15 January 2009, where it was held that the taking of a baby's photograph in a hospital without the parent's consent constituted a violation of article 8. There was no public interest in taking the photograph and the retention of the photographs contrary to the parents' wishes was an aggravating factor.

Question 2

In *Barclays Bank PLC v Guardian News and Media Ltd* [2009] EWHC 591 (QB), it was held that an injunction preventing the further dissemination of the claimant's financial documents by the defendant newspaper should be continued pending full trial. The High Court held that although general availability of material on the internet would mean that such information would lose its confidential character, limited and partial dissemination, perhaps in some remote and specialist site that was not generally available to the public without a great deal of effort, would not result in a loss of such confidentiality. Thus s.12(4) and public domain was not a complete defence and the court had to apply proportionality. The documents related to how financial institutions operated in the economy and thus were a matter of most serious public debate. However, that did not give journalists complete freedom to publish in full confidential documents leaked in breach of a fiduciary duty. It would be a relevant factor if the debate could flourish without such full disclosure. Responsible journalists should consider whether publication of personal details about the affairs of corporations that may not have even broken the law was appropriate. Legal professional privilege of the claimants was also relevant in this case and publication would

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have eroded that privilege. In the circumstances the bank would probably have demonstrated that publication was disproportionate at full trial.

In *Re X (a Child)* 2009] EWHC 1728 Fam, it was held that under s.12(2) of the Human Rights Act the media should have been informed of an impending injunction before an order was made excluding it from attending residence and contact proceedings concerning the child of well-known public figures.

Question 3

In *Times Newspapers (Nos 1 and 2) v United Kingdom*, 10 March 2009 it was held that there had been no violation of article 10 when the newspaper was made liable for defamatory comments repeated on their internet site. The Court concluded that the Internet publication rule did not operate as a disproportionate interference with freedom of expression in the present case as the paper had merely been requested to offer a suitable qualification to the initial publication. However the Court accepted that proceedings brought a long time after initial publication might give rise to a disproportionate interference given the operation of the rule.

In *Clift v Slough BC* [2009] EWHC 1550 (QB) it was held that a local authority could place a person on a 'violent persons register' and publish that list to local authority departments whose staff faced customers, but that the defence of qualified privilege did not extend to publication to other departments – that was a disproportionate interference with the claimant's article 8 rights.

In *Levi v Bates* [2009] EWHC 1495 it was held that the defence of qualified privilege did not apply when a defamatory statement relating to the claimant's financial conduct was made in a football match programme. The purchasers of the programme were held not to have a genuine public interest in being informed about the club's financial affairs over recent years or the conduct of the claimant during that period.

Question 6

In *In the Matter of an Application by D* [2009] NICty 4 the Belfast High Court held that a journalist was not bound to disclose her sources to the police. She had interviewed members of the IRA regarding the killing of two soldiers and the Chief Constable had sought an order under the Terrorism Act 2000 requesting the disclosure of that information. It was held that the journalist's right to life outweighed any need for such disclosure. On the facts there was a real and immediate risk to her life, which the state and the court were bound to protect under article 2 ECHR.

Chapter 11

Question 1

In *Atkas and others v France*, 17 July 2009 the European Court held that there had been no violation of article 9 when pupils had been excluded form school for wearing religious symbols. Upholding *Sayin v Turkey*, the Court stressed that the ban was necessary to

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uphold secularism in the country – upholding in this case the state's role as the neutral and impartial organiser of the exercise of various religions and faiths.

(In *Ghai v Secretary of State for Justice* [2009] EWHC 978 (Admin) it was held that although the criminalising of open air funeral pyres interfered with the right to manifest religious beliefs under article 9 ECHR (*R (Williamson)* applied because of the seriousness and importance of the claim), such interference was justified under article 9(2) where a significant number of people would find both the principle and reality of such cremations offensive.)

Question 3

See *Leroy v France*, October 2 2008 – prosecution for condoning terrorism via a cartoon; noted by Sottiaux, [2009] EHRLR 415

Questions 4 and 5

The Joint Committee on Human Rights has published its 7th report of 2008-09 on demonstration: 'Demonstrating Respect for rights? A human rights approach to policing protest.' It recommends the repeal of the Serious Organised Crime and Police Act 2005 with respect to protests around Parliament, the revision of s.5 of the Public Order Act 1986 and the clarification of arrest powers under terrorism legislation. It is available on http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/4702.htm See also the government's response: Cm 7633 May 2009

Clauses 32 and 33 of the Constitutional Reform and Governance Bill propose to repeal the provisions of the 2005 Act, and to amend Part 2 of the Public Order Act 1986 so as to give power to impose conditions on processions and assemblies around Parliament.

The European Court of Human Rights has conducted a hearing with respect to a claim that stop and search powers conducted under the Terrorism Act 2000 (*R (Gillam)*) was contrary to article 5 and 10 and 11 of the ECHR: *Gillan and Quinton v UK,* App No. 4158/05

In *Austin v Commissioner of the Police of the Metropolis* [2009] UKHL 5 the House of Lords upheld the Court of Appeal's decision (page 548 of the text) that the police were entitled to detain protestors in a zone for up to 7 hours in order to deal with a breach of the peace. Their Lordships held that article 5 of the Convention was not engaged in the present case because the police action did not constitute a detention within that article. The intention of the police in the present case was to maintain the cordon only so long as was reasonably necessary to achieve a controlled dispersal and thus the measures taken were proportionate.

In *Barrraco v France*, 5 March 2009 the Court found no violation of article 11 when the applicant had been prosecuted for obstruction of the highway when taking part in a slow vehicle demonstration in the name of his union as part of a national day of protest. The applicant had in fact had the opportunity to protest for a number of hours and the complete blockage of the highway went beyond normal disruption caused by demonstrations.

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