

Assessed Work 2020-21

Module: Research Writing Credit (LW3RWC)

Length: not more than 12 pages *formatted in accordance with the School of Law Assessed Work Rules*

Submission Deadline: *provisional: expected to be just after the end of the Spring Term*

Module and Title Selection Process:

1 Selecting the module

If you wish to take this module you must select it in RISIS during the module selection period (expected to be between **Thursday 16 April and Thursday 30 April**).

2 Selecting the title

You must ALSO select 3 of the following titles in order of preference **during the same period**.

Students currently at Reading: you must indicate your preferences in a selection document that will be set up in your current LW2PLP Property Law Research Project Blackboard site

Students currently on a Year Abroad or suspended: you must email your preferences to [redacted]

Students not selecting a title on time will be allocated one and will usually not be able to change it.

The vast majority of students selecting on time have been allocated their first choice of title in the past. But you must do the title allocated to you by the Module Convenor; if in doubt consult with him.

Important note

When submitting any assessed coursework, you will be asked online to confirm: "I certify that neither this piece of work, nor any part of it, has been submitted in connection with another assessment." If you foresee any problems with this, consult the module convenor.

POSSIBLE TITLES:

1 [Abortion Rights]

Autonomy is the ability to have control over one's body. Is the Abortion Act 1967 out of date as it requires a woman to get two signatures in order to terminate her pregnancy?

Introductory reading: Sally Sheldon *Beyond Control: Medical Power and Abortion Law* (Pluto Press 1997).

2 [Armed Conflict – international law]

Should international law regulate the conduct of war?

Introductory reading: Chris af Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49.

3 [Bank Confidentiality]

Critically discuss the duty of confidentiality in the UK bank-customer relationship, examining the extent of, and exceptions to, this duty along with the EU General Data Protection Regulation.

Introductory reading: *Tournier v National Provincial and Union Bank of England* [1924] KB 461.

4 [Climate Law – environmental law]

To what extent does climate change give rise to problems of relocation away from vulnerable territories? How ready and able has law been to address this challenge?

Introductory reading: Marta Rodriguez Martinez and Lillo Montalto Monella, 'Extreme Weather Exiles: How Climate Change is Turning Europeans into Migrants', euronews, 28 Feb 2020, available at <https://www.euronews.com/2020/02/26/extreme-weather-exiles-how-climate-change-is-turning-europeans-into-migrants>

5 [Corporate Criminal Responsibility – company law]

"The identification theory of corporate criminal liability sometimes seems too fragile to survive." (Derek French, Stephen Mayson & Christopher Ryan, *Mayson, French & Ryan on Company Law* (33rd edn, OUP, 2016) 655)

Critically discuss.

Introductory reading: G R Sullivan "The attribution of culpability to limited companies" [1996] CLJ 515.

6 [Copyright Exceptions and Freedom of Expression]

Is copyright law consistent with freedom of expression, and what role (if any) do copyright exceptions play in accommodating freedom of expression interests?

Introductory reading: Christophe Geiger and Elena Izyumenko, 'The Constitutionalization of Intellectual Property Law in the EU and the Funke Medien, Pelham and Spiegel Online Decisions of the CJEU: Progress, but Still Some Way to Go!' (2020) 51 IIC 282.

7 [Crimes Against Humanity: Amnesty – international criminal law: International Law Commission]

Should the International Law Commission have expressly prohibited amnesty laws for crimes against humanity in the draft Convention on Crimes Against Humanity?

Introductory reading: Hugo A. Relva, 'Three Propositions for a Future Convention on Crimes Against Humanity: The Prohibition of Amnesties, Military Courts, and Reservations' (2018) 16(4) *Journal of International Criminal Justice* 857-875.

8 [Criminal Cases Review Commission – criminal justice]

How effective has the Criminal Cases Review Commission proved to be in the 23 years since it was created? Explain and illustrate some of the main challenges and difficulties that this body has encountered in practice, and suggest some ways in which they might be addressed.

Introductory reading: Hoyle, C. and Sato, M. (2019) *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission* (Oxford University Press).

9 [Criminal Records]

In *R (on the application of P and others) v Secretary of State for the Home Department* [2019] UKSC 3 the majority of the Supreme Court held that the publication of a reformed offender's criminal history and spent offences to employers and/or professional bodies was not disproportionate under Article 8 of the ECHR. However, dissenting, Lord Kerr said that for any such scheme to continue there existed 'at least the potential to have widespread disproportionate outcomes' (at [149]), since there do not exist adequate checks and balances, and societal bias nearly always favours those without spent convictions. Was the majority correct, or is the effect of *P and others* such that this now permits employers to act as judges and discriminate against reformed offenders? Critically discuss.

Introductory reading: UKSC website for the judgment:

<https://www.supremecourt.uk/cases/uksc-2017-0170.html>

and KL Marshall in the *Cambridge Law Journal* for discussion of the case:

<https://www.cambridge.org/core/journals/cambridge-law-journal/article/reformed-offenders-criminal-record-disclosures-and-employment/85CD7876FD7800426C107C5F06735CDB>.

10 [Defences After Human Trafficking – criminal law]

Does the law in England and Wales offer victims of human trafficking or slavery adequate protection from criminal liability for offences they were compelled to commit?

Discuss with reference to the common law defence of duress and the legislative defence in s. 45 of the Modern Slavery Act 2015, relevant case law and legal scholarship.

Introductory reading: Karl Laird, 'Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defence of duress: an opportunity missed?' (2016) 6 *Criminal Law Review* 395-404 (available from Westlaw).

11 [Disaster Risk Information – international law]

Critically analyse the extent to which states are obligated, under international law, to inform persons on their territory about disaster risk.

Introductory reading: Marlies Hesselman, 'Access to disaster risk information, early warning and education: Implementing the Sendai Framework through human rights law', in K Samuel, M Aronsson-Storrier and K Bookmiller (eds) *Cambridge Handbook of Disaster Risk Reduction in International Law* (Cambridge University Press, 2019) 188-206.

12 [Equal Pay – employment law]

Outline and critically assess the UK's equal pay provisions. What more has and should be done to challenge the broader gender pay gap that exists in the UK?

Introductory reading: O'Reilly, J., Smith, M., Deakin, S and Burchell, B (2015) 'Equal pay as a moving target: international perspectives on forty-years of addressing the gender pay gap' *Cambridge Journal of Economics* Vol.39 pp 299-317.

13 [EU International Trade Agreements and Human Rights – EU law]

'Human rights have become an essential aspect of the European Union's trade agreements with third states.' Critically discuss.

Introductory reading: Samantha Velluti, 'The promotion and integration of human rights in EU external trade relations' (2016) 32 (83) *Utrecht Journal of International and European Law* 41-68 [DOI: <http://doi.org/10.5334/ujiel.342>].

14 [Family Law and Legal Aid]

The restrictions on legal aid brought in by the Legal Aid, Sentencing and Punishment of Offenders ('LASPO') Act 2012 for private law family cases have had such negative consequences that they should be reversed as soon as possible. Critically discuss.

Introductory reading: J Mant, 'Litigants' experiences of the post-LASPO family court: key findings from recent research' [2019] *Family Law Journal* 300.

15 [Feminism and Women's Rights]

Should anyone who self-identifies as a woman be legally viewed and treated as a woman?

Introductory reading: <https://www.theguardian.com/society/2018/oct/19/gender-recognition-act-reforms-six-legal-views-transgender-debate>

16 [Freedom of Expression]

According to Professor Eric Barendt the marketplace of ideas theory as a philosophical foundation for free speech 'rests on shaky grounds'. Critically analyse the accuracy of this statement, and whether other theories are better suited to support free speech, particularly in the context of the modern media.

Introductory reading: Barendt, E. *Freedom of Speech*, (2nd ed. Oxford University Press, 2005), 12.

17 [Gender in Constitutionalism]

“Historically, constitutions have been almost exclusively man-made, and it shows.” (Quote from Mackinnon, below.)

Critically discuss.

Introductory reading: Catharine Mackinnon, “Gender in Constitutions” in Michel Rosenfeld and András Sajó (eds.) *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012).

18 [International Human Rights Law - economic, social and cultural rights]

'The distinction between sufficiency and equality allows us to see how profoundly the age of human rights, while a good one for some of the worst off, has mainly been a golden age for the rich': Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018) 5. Critically discuss.

Introductory reading: Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' (2014) 77 *Law and Contemporary Problems* 147.

19 [International Refugee Law]

It has been argued that international refugee law is in essence a sub-set of international human rights law. Critically evaluate this view.

Introductory reading: Vincent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (OUP 2014); available at the [University of Reading library](#)

20 [Legal History and Legal Scholarship]

What contribution can the study of legal history make to efforts to understand, evaluate and reform current law?

Introductory Reading: Michael Lobban, 'Introduction: The Tools and the Tasks of the Legal Historian', in Andrew Lewis and Michael Lobban (eds), *Law and History* (Oxford, 2004).

21 [LGBT Rights under European Law]

Which European Court (the CJEU or the ECtHR) is braver in extending LGBT rights?

Introductory reading: R. Wintemute, 'In Extending Human Rights, which European Court is Substantively “Braver” and Procedurally “Fitter”? The Example of Sexual Orientation and Gender Identity Discrimination' in S. Morano-Foadi and L. Vickers (eds), *Fundamental Rights in the EU: A Matter for Two Courts* (Hart, 2015).

22 [Planning Procedures – transport, infrastructure, environment, private rights]

Critically evaluate the extent to which planning procedures in the UK pertaining to major transport infrastructure projects (road, rail and airport expansion) achieve a satisfactory balance between securing economic prosperity and safeguarding private interests that may be adversely affected in addition to wider environmental concerns.

Introductory reading: Mark L Wilde, 'All the Queen's horses: statutory authority and HS2' (2017) 37(4) *Legal Studies* 765.

23 [Privacy Law and the Right to be Forgotten]

Critically assess the geographical scope of the EU's right to be forgotten by reference to the CJEU's judgment in *Google v CNIL* Case C-507/17.

Introductory reading: Yann Padova, 'Is the right to be forgotten a universal, regional, or 'glocal' right?', (2019) 9 *International Data Privacy Law* 15

<https://doi.org/10.1093/idpl/ipy025>

24 [Royal Prerogative – public/constitutional law]

Should judges, in future, treat every Royal Prerogative power as being justiciable? Critically discuss in light of the *Miller* and *Cherry* litigation, culminating in the UK Supreme decision *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41.

Introductory reading:

<https://ukconstitutionalaw.org/2019/09/20/steven-spadijer-prorogation-justiciability-and-the-reserve-powers/>

25 [Secured Transactions - banking law]

"The English law on secured transactions is antiquated and in need of reform." Critically evaluate this statement in light of recent and proposed changes to the relevant law in other jurisdictions worldwide.

Introductory reading: Magda Raczynska, "A new model law of secured transactions: worldwide modernisation in the making?" (2014) 11 *JIBFL* 697.

26 [Shari'a Law in the UK – women's rights, multiculturalism]

"[A] limited accommodation approach, based on a model of weak multiculturalism and full respect for human rights, is best able to meet the myriad of challenges in the UK when calls are made for the incorporation of sharia law." (Quote from Peter Cumper, below.)

Critically assess the above statement.

Introductory Reading: Peter Cumper, 'Multiculturalism, Human Rights and the Accommodation of Sharia Law' (2014) 14 *Hum. Rts. L. Rev.* 31-57.

27 [Surrogacy – parenthood; policy]

"The law must recognise the correct people as parents of children born through surrogacy. Not to do so is not in children's or families' best interests." (Executive Summary, *Surrogacy in the UK: Myth busting and reform, Report of the Surrogacy UK Working Group on Surrogacy law reform*, November 2015.)

Critically assess who are the "correct people" to be parents following surrogacy, and why. Do you agree that there is a need to reform the current law? If so, what would you propose? If not, why not?

Introductory reading: *Surrogacy in the UK: Myth busting and reform, Report of the Surrogacy UK Working Group on Surrogacy law reform*, November 2015, and follow up report *Further evidence for reform – second report*, December 2018.

Available at:

<https://www.surrogacyuk.org/Downloads/Surrogacy%20in%20the%20UK%20Report%20FINAL.pdf>

AND <https://surrogacyuk.org/wp-content/uploads/2018/12/Surrogacy-in-the-UK-2nd-Report-20181230.pdf>

28 [Use of Force – international law: self-defence; non-state actors]

Critically examine the so-called ‘unwilling or unable’ doctrine in relation to the use of military force by states in response to attacks by, or threats posed by, non-state actors.

Introductory reading: Craig Martin, ‘Challenging and Refining the “Unwilling or Unable” Doctrine’ (2019) 52 *Vanderbilt Journal of Transnational Law* 245.

29 [Vulnerable Persons in the Criminal Justice System]

In what ways have the criminal courts adapted their practice and procedure to support and protect vulnerable witnesses and defendants and how far does this actually assist those vulnerable individuals to exercise their right to a fair trial and access to justice?

Introductory reading: Professor Penny Cooper and Dr Clare Allely ‘The Curious Incident of the Man in The Bank: Procedural Fairness and a Defendant with Asperger's Syndrome’ (2016) 180 JPN 632 (*Criminal Law & Justice Weekly*, formerly *Justice of the Peace News* - available on Lexis)

30 [Women and Commercial Law]

“Some of the most exciting recent developments in commercial law have been driven or inspired by women.” (Mrs Justice Carr DBE, *Jill Poole Memorial Lecture*, Aston University: 23 October 2019)

Critically assess that statement and illustrate your answer with relevant examples.

Introductory reading: “Women in Commercial Law”, Mrs Justice Carr, *Jill Poole Memorial Lecture* Aston University, 23 October 2019. Available at:

<https://www.judiciary.uk/announcements/speech-by-mrs-justice-carr-dbe-women-in-commercial-law/>