**IN THE SUPREME COURT**

**ON APPEAL FROM THE DIVISIONAL COURT (CRIMINAL DIVISION)**

**B E T W E E N:**

**MEURSAULT**

Appellant

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

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| **MOOT PROBLEM**  *Rosamund Smith Moot Final, 27 October 2020* |

1. By June 2022, the Government has left the Council of Europe and has withdrawn from the European Convention on Human Rights. By a large majority Parliament has repealed the Human Rights Act 1998 and passed the United Kingdom Human Rights Act 2022; pursuant to that new Act, the United Kingdom will no longer give effect to decisions of the European Court of Human Rights, and a Royal Commission is required to consider and report on the establishment of a set of United Kingdom rights “to take back British rights for British citizens”. The Royal Commission is sitting, presided over by a senior former editor of a popular newspaper, but has yet to report.
2. In July 2022 new statutory provisions were introduced relating to mandatory life prisoners. The Criminal Justice Act 2003 (sections 269-277, Schedules 21 and 22) which provided a statutory scheme for such prisoners was repealed. The new statutory scheme in the Criminal Justice (Mandatory Life Imprisonment) Act 2022 (the “CJ (MLI) Act 2022”) provides for a system whereby the Secretary of State for the Home Department sets the tariff period, after receiving advice from the trial judge and the Lord Chief Justice. The convicted person is not entitled to see that advice but is informed of the Home Secretary’s decision. The statute provides that that decision “*shall not be subject to review or appeal in any court by reason of (i) lack of jurisdiction, (ii) irregularity, (iii) error of law (iv) breach of natural justice, or (v) any other matter.”* (section 3 CJ (MLI) Act 2022).
3. Meursault is convicted of murdering a young black man, after a fight in a queue for a taxi, in an area of high racial volatility and sentenced to life imprisonment after a trial which aroused strong feelings of revulsion. The Home Secretary sets a tariff of 40 years imprisonment; she reveals in Parliament that, as a member of a Government which listens to the views of the people, she has imposed a tariff which is considerably in excess of that which would have been set under the old regime.
4. Meursault seeks a judicial review of the Home Secretary’s decision. He argues that the right to a fair trial, formerly enshrined in Art.6 of the Convention, is so embedded within the common law, coupled with the Secretary of State’s obligation to observe the “Rule of Law” , that he cannot be deprived of access to a court to determine his sentence.
5. A Divisional Court (the Lord Chief Justice, Dee and Poppin JJ) rules that the withdrawal from the Convention, the repeal of the CJA 2003 and the terms of the CJ (MLI)Act 2022 are, in combination, sufficient to oust the jurisdiction of the court. Parliament is sovereign and the Secretary of State is only answerable to Parliament for her decision.
6. Since this is a “criminal cause or matter”, the appellant appeals directly to the Supreme Court, adopting the arguments he had previously deployed in the Divisional Court. The Supreme Court has given permission to appeal on two related but distinct grounds, to be argued in October 2022:
7. **The limits on Parliamentary sovereignty**: As a matter of constitutional principle, the sovereignty of Parliament cannot deprive the rule of law of all legal effect; both government and the legislature are bound to uphold that principle. It is for the courts and not Parliament to determine the identity and scope of the rule of law. Parliament cannot oust the right of access to the courts in matters relevant to that determination. The common law has shown itself able to develop so as to vindicate rights which, even though they may not have existed prior to 1998, are irremovably embedded in the notion of the rule of law.
8. **Sentencing as part of a fair trial**: No-one can be deprived of so fundamental a right as the right to a fair trial. Sentencing by an independent tribunal is an integral part of that right. The power of the Secretary of State to set a minimum period deprives the appellant of that right.

*Moot problem set by:*

**Master Alan Moses**

**October 2020**