



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 12 – Public Law

Question paper

June 2023

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – **Blackstone’s Statutes on Public Law and Human Rights, 32nd edition, John Stanton, Oxford University Press, 2022**.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

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SECTION A

Answer at least one question from this section

1. (a) Explain how the Human Rights Act 1998 has incorporated the European Convention on Human Rights into UK law. **(13 marks)**

(b) Critically evaluate the effectiveness of the Human Rights Act 1998 in protecting human rights in the UK. **(12 marks)**

(Total: 25 marks)

2. (a) Explain how the UK Parliament has devolved power to Scotland. **(10 marks)**

(b) Critically analyse the impact of devolution to Scotland on parliamentary sovereignty, including on the principle of implied repeal. **(15 marks)**

(Total: 25 marks)

3. 'In the post-Human Rights Act era, when the right to privacy comes into conflict with free speech the courts will need to strike an appropriate balance between the two rights.'

Steve Foster, 'Interfering with editorial judgement, making "good television" and the loss of the public interest defence (Case Comment)' (2019) 24(3) Comms L 102, 103

Critically evaluate this statement, with reference to whether the courts do strike an effective balance between the right to privacy (Article 8 ECHR) and the right to freedom of expression (Article 10 ECHR).

(25 marks)

4. Critically evaluate the extent to which the Freedom of Information Act 2000 succeeds in providing the public with effective access to documents and other data held by public bodies.

(25 marks)

SECTION B

Answer at least one question from this section

Question 1

[NOTE TO CANDIDATES: The Act, licensing agency and organisations referred to in this question are fictitious.]

Following concern as to the standard of care that dogs receive from commercial dog walkers, Parliament enacted the Dog Walkers (Accreditation) Act 2022 ('the Act'). The Act creates the Canine Services (Licensing) Agency ('CSLA'), which is responsible for regulating the standard of commercial dog walkers through a licensing system. To lawfully operate a dog walking business, commercial dog walkers must obtain a licence from the CSLA. Section 14 of the Act provides that decisions of the CSLA 'shall not be challenged in any court proceedings whatsoever'.

The CSLA has issued guidelines stating that it will normally grant licences to businesses that have been operating a dog walking service for at least three years, can produce audited accounts for that period and provide two satisfactory references from professionals such as solicitors and accountants. The CSLA has recently made the following decisions, regarding applications for a licence.

- (i) Nazreen applied to the CSLA for a licence to operate a commercial dog walking business. Last week she received a letter from the CSLA stating:

'Your application has been rejected because it is our policy to grant licences only to applicants who have at least three years' experience in working with dogs. This is to ensure the financial viability of well-established dog-walking businesses.'

Although Nazreen has only worked with dogs for six months, she is a qualified vet with an outstanding reputation. She has produced excellent references from her solicitor and accountant and a business plan that her accountant helped to produce showing that her business is on a sound financial footing.

- (ii) Best Pooch Daycare Ltd ('BPD') was last week granted a licence by the CSLA to provide dog walking services throughout London. The Dog Wellbeing Alliance ('the Alliance') is a pressure group that campaigns about standards of care provided by commercial organisations specialising in services for dog owners. It is concerned about this decision, as it knows that BPD allows its dog walkers to walk an unlimited number of dogs at the same time. This has resulted in a number of injuries when fights between dogs have broken out and also when dogs have escaped and been run over.

The Alliance has information in its possession that Jefferson, the CSLA's chief executive, last year made a loan of £750 to BPD which has not yet been repaid.

Advise Nazreen and the Alliance whether each may make a claim for judicial review of the decisions concerning them and whether any such claim is likely to succeed.

(25 marks)

Turn over

Question 2

Saturday 22 April 2023 - 5.00pm

PC Watling attended EverTech, a shop in Blackpool, after receiving a report from the shop manager that a Tempus Alpha (a very popular smart watch) and some headphones had been stolen. The manager gave PC Watling a detailed description of the thief. According to him, the thief was a tall woman in her early 20s with brown hair and wearing a green jumper and blue jeans.

On leaving the store PC Watling saw Janice. Janice matched the manager's description of the thief. PC Watling stopped Janice and said to her; 'I would like a word with you. You have been behaving badly.'

Janice started to walk off and PC Watling grabbed hold of her arm, twisting it; a Tempus Alpha fell from her wrist. PC Watling picked it up and told Janice; 'You are coming with me because you have been an awfully bad young woman.'

Saturday 22 April 2023 - 5.30pm

PC Watling took Janice to the police station. On arrival the custody officer, Sergeant Chukwu, told her that she had been arrested on suspicion of having stolen a Tempus Alpha and some headphones from EverTech. Sergeant Chukwu complied with all statutory requirements for Janice's detention, including informing her of her rights. Janice told Sergeant Chukwu that she wanted to consult her solicitor. Superintendent Davenport refused her request in writing, claiming that access to a solicitor might result in interference with evidence connected to the theft, in particular the headphones, which were still missing. Janice was locked in a cell and left alone until the next day.

Saturday 22 April – 6.00pm

At Sergeant Chukwu's verbal suggestion, PC Watling, accompanied by PC Fife, went to Janice's house to search for the missing headphones. Beth, Janice's wife, asked for a search warrant, but they told her the law allowed them to search the house without a warrant. Beth let them search the house, but they did not find anything.

Sunday 23 April – 2.00pm

PC Watling interviewed Janice and told her; 'If you do not admit to stealing the Tempus Alpha, you won't see your wife for a very long time.' Janice then admitted to stealing the Tempus Alpha and signed a confession to that effect. She was charged with theft and released.

[Note to candidates: Theft is a triable either way offence AND assume that nothing else of further legal significance has occurred.]

Advise the police on the legality of their conduct and whether, at Janice's subsequent trial for theft, it will affect the admissibility of the confession she made at the police station.

(25 marks)

Question 3

As part of the UK Government's plans to secure the supply of essential natural resources, the Department of Business Efficiency and Security ('DBES') (fictitious) has authorised the reopening of some tin mines in Cornwall, which had last operated in the late 20th century. Residents in towns near the sites of the mines formed the Kernow Preservation Coalition ('KPC') to protest against the reopening of the mines.

The KPC's executive committee decided to hold a demonstration in Eastbourne, which is the constituency of Dillon Harris, the Secretary of State for Business Efficiency and Security. The committee therefore gave the Sussex Police six days' notice of KPC's intention to stage a march. The proposed route included Dillon's constituency office. Inspector Fife issued written directions requiring the marchers to take a route avoiding Dillon's constituency office on the grounds that office staff might be unable to work due to the noise that the march was likely to generate.

300 protestors, led by Ben, marched from Eastbourne Station to a pier on Eastbourne's seafront. They gathered on the pier and Ben made a short speech attacking the government's plans. Inspector Fife and PC Clyde watched the protestors for 15 minutes, then PC Clyde ordered them to disperse within the next 10 minutes as they were obstructing the public's use of the pier.

As they dispersed, PC Clyde stopped Ben as there was a large bulge in his jacket. PC Clyde told him that the bulge looked like he was carrying a gun, so he was going to search him. Ben told him that it was an umbrella. PC Clyde insisted on carrying out the search and the bulge was indeed an umbrella.

(a) Advise the police on the legality of their conduct.

(16 marks)

After Ben and the protestors left the pier, they decided to march past Dillon's constituency office. As they marched past it, two of the constituency office's employees were leaving the office, and Ben and the protestors jeered at them, chanting repeatedly 'Destroy Dillon! Destroy his people!' and pretended to throw punches at them. The employees made rude gestures at the protestors in return.

(b) Advise Ben whether he has committed any criminal offences.

(9 marks)

(Total: 25 marks)

Turn over

Question 4

[NOTE TO CANDIDATES: The political parties and constituency referred to in this question are fictitious.]

Mary Kempton was a candidate for the opposition Technology Party in the recent Pinelands South by-election. Mary had previously been the MP for another constituency but had lost her seat at the 2015 general election after which the Uniting Party had replaced the Technology Party as the governing party. During the recent campaign, the candidate for the Uniting Party, Harry Smith, circulated election leaflets accusing Mary, while she had been an MP, of accepting bribes from certain chemicals manufacturers to lobby cabinet ministers to adopt policies favourable to the chemicals industry. Harry won the by-election by 150 votes, but Mary believes that she would have won but for the claims about bribery in Harry's election leaflets.

Harry was asked in a radio interview to substantiate his claims about Mary, and he claimed that a high-level employee of a chemicals manufacturer had disclosed the information to him at a private meeting. He added that he believed the employee was telling the truth, as the employee had produced handwritten notes of a meeting at which Mary agreed to accept a bribe. Mary has consistently denied these claims.

- (a) Advise Mary of her rights to challenge the by-election result.

(12 marks)

Assume for this next part of the question only that Mary decided not to challenge the by-election result. Instead, she decided to sue Harry for defamation. At the close of the second day of the hearing of her defamation claim, the Uniting Party's press office commented on the proceedings on social media, with posts on Facebook, Instagram and Twitter.

A typical social media post was as follows: 'We have seen what happened in the High Court today. Harry Smith MP's evidence is clear. Mary Kempton's attempt to smear Harry is the cowardly reaction of a bad loser. Harry is a man of integrity, and we call on the High Court to listen to the evidence and to throw out Mary's claim, giving her the telling-off she deserves. Unelected judges must not defy the voters of Pinelands South who rejected the malicious Mary.'

- (b) Advise the Uniting Party's press office whether it may incur criminal liability under the Contempt of Court Act 1981 as a result of its social media campaign.

(13 marks)

(Total: 25 marks)

End of the examination