



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

January 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.

Turn over

SECTION A

(Answer at least one question from this section)

1. '[T]here is a connection between the separation of powers and the rule of law: in this case, the separation of powers serves the rule of law by insisting that only our elected representatives should make law and by confining the exercise of the judicial function to a branch of government which...is independent of domination or manipulation by the political branches.'

Denise Meyerson, 'The Rule of law and the Separation of Powers [2004] MqLJ 1

- (a) Critically evaluate the above statement with reference **only** to the constitutional principle of the rule of law and the importance of an independent judiciary.

(10 marks)

- (b) Critically analyse the extent to which the principle of the separation of powers in the UK constitution enables an independent judiciary - in its relationships with the executive and legislature - to be 'independent of domination or manipulation by the political branches'.

(15 marks)

(Total: 25 marks)

2. With reference to the sources of the UK constitution and how constitutional changes can be made, critically evaluate the flexibility of the UK constitution.

(25 marks)

3. (a) Describe the jurisdiction of the Parliamentary and Health Service Ombudsman's role as Parliamentary Commissioner for Administration.

(10 marks)

- (b) Critically analyse the effectiveness of the Parliamentary Commissioner for Administration in providing adequate remedies for the citizen in respect of public service failure.

(15 marks)

(Total: 25 marks)

4. With reference to Article 10 of the European Convention on Human Rights and the doctrine of proportionality, critically evaluate the extent to which the strict liability offence created by the Contempt of Court Act 1981 strikes an effective balance between the press's freedom of expression and the interests of justice.

(25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

In August 2011 the European Union validly adopted EU Regulation 2011/38 on the payment of compensation to business users of electricity (fictitious). Regulation 2011/38 provides that suppliers of electricity in EU Member States must pay compensation to their business customers should there be a power failure lasting more than three hours. It further provides that electricity suppliers are not liable if the power failure occurs due to extraordinary circumstances.

In December 2019 the UK Government enacted the Business Users of Electricity Compensation (EU Exit) Regulations 2019 (fictitious) amending Regulation 2011/38. The EU Exit Regulations substituted the United Kingdom for EU Member States and came into force at the end of the transition period at 11.00pm on 31 December 2020.

The Electricity Industry Act 1991 (fictitious), an Act of the UK Parliament that regulates the UK electricity industry and is still in force, provides that suppliers of electricity are under no obligation whatsoever to pay compensation to their customers should a power failure occur.

Teague Industries plc ('Teague'), a British manufacturer of a wide range of products, lost its electricity supply to its factory in Gloucester for eight hours and wants to claim compensation from its electricity supplier, Campo Energy plc ('Campo'). However, Campo is arguing that the power failure resulted from extraordinary circumstances, being a mechanical fault discovered in a routine inspection of one of its turbines. However, the Court of Justice of the European Union ruled in March 2017 that a mechanical fault discovered in a routine inspection was not an extraordinary circumstance, as discovering faults in routine inspections is inherent in the normal activities of an electricity supplier.

- (a) Advise Teague if it can rely on retained EU law to claim compensation from Campo and whether Campo can rely on the 'extraordinary circumstances' defence.

(17 marks)

Teague also has a factory in Newport, Wales. The UK Parliament passed an Act, the Enhancement of the Environment Act 2021 (fictitious), that required owners of factories in England and Wales to prepare an environmental improvement plan for submission to the appropriate authorities by 30 November 2022. Failure to do so is a criminal offence. As matters pertaining to the environment have not been reserved to the UK Parliament, the UK Government sought the consent of the Senedd Cymru (Welsh Parliament). The Senedd Cymru, however, refused to pass a legislative consent motion.

Teague failed to provide an environmental improvement plan by 30 November 2022 and has been prosecuted for its failure to do so.

- (b) Advise Teague if it can rely on the Senedd Cymru's refusal to grant legislative consent as a defence to the prosecution.

(8 marks)

(Total: 25 marks)

Turn over

Question 2

The UK Government adopted a policy of promoting the sale of fish sourced from fisheries that meet verified standards for sustainable seafood production. To implement this policy, Parliament enacted the Sustainable Seafood Act 2022 ('the Act') (fictitious) establishing the (fictitious) Marine Certification Authority ('the MCA'). The Act gave the MCA the power to grant government-backed sustainable seafood certification to importers of sustainably sourced fish.

The MCA issued guidelines that it would normally grant sustainable seafood certification to importers who had previously held sustainable seafood certification for the previous three years under the non-governmental scheme that had existed before the Act ('the original system'). The MCA has recently made the following decisions:

- (i) The MCA rejected an application for certification by Ubogu Piscaries Ltd ('Ubogu'), a company that imports prawns from Thailand, because it had only held sustainable seafood certification under the original system for two years. Ubogu had pointed out in its application that it has held certification under the original system for 9 out of the past 10 years; the only reason it had not held certification for the whole of the past three years is that there had been a gap of one year due to a clerical error on the part of the organisers of the original system. It had also submitted evidence that the Thai fisheries significantly exceeded the standard needed for certification.
- (ii) The MCA sent a letter to Guscott Fisheries Ltd ('Guscott'), an importer of cod from Iceland, rejecting its application for sustainable seafood certification, even though it had been certified under the original system for six years. The MCA gave no reasons for its decision.
- (iii) The MCA granted Dooley Produce Ltd ('Dooley'), an importer of anchovies from Peru, sustainable seafood certification, even though it had not been certified under the original system. In giving reasons for its decision, the MCA stated that the grant of certification to Dooley would assist the UK Government's efforts to conclude a trade agreement with Peru. The Seafood Honesty Campaign ('SHC') (fictitious), a pressure group that has campaigned nationwide for sustainable fishing practices, believes that the MCA's decision is wrong.

Advise Ubogu, Guscott and SHC whether each may make a claim for judicial review of the decisions affecting them and whether any such claim is likely to succeed.

(25 marks)

Question 3

Victor is a British citizen who is a staunch supporter of the Zargastani Liberation Party ('ZLP'), a political party whose aims include overthrowing the government of Zargastan (a fictitious country in central Asia). The police believe that Victor is conspiring with other supporters of the ZLP to plant a bomb at the Zargastani Embassy in London.

However, the police do not believe they have enough evidence to charge and arrest Victor regarding the plan to bomb the embassy.

(a) Advise the Home Secretary whether she can take any steps against Victor.

(8 marks)

Assume, for this next part of the question only, that the Home Secretary took no action against Victor as she concluded that he did not pose a threat.

The ZLP organised peaceful protests against the Zargastani Government in Zargastan, and during the protests Zargastani security forces shot dead 60 unarmed protestors. ZLP supporters in London held a meeting the next day in a community hall and decided to march in protest against the killings. They decided first to march on a crowded street market selling Zargastani products, and then on to the nearby Zargastani Embassy.

As about 100 protestors approached the street market, they were stopped by PC McCall who told them the march was illegal and that they should go home. After the protestors complained to PC McCall, she agreed to allow them to proceed to the embassy but told them to avoid the street market. The protestors then headed towards the embassy.

On arrival at the embassy, the protestors gathered on a street outside, partially blocking traffic, which had to pass with care. The protestors chanted loudly, 'Murderers, murderers, we shall avenge the dead.' Embassy officials complained to PC Horan and Sergeant Eales, the police officers at the scene, about the content of the chants and the noise levels. They claimed to be frightened by the chants and said the noise levels prevented them from working properly. PC Horan then told the protestors to leave within the next 15 minutes.

A few of the protestors refused to leave and, after they refused to disclose their identities, PC Horan told them they were under arrest for 'obnoxious behaviour'. He immediately took the protestors to the nearest police station where the custody officer complied with all statutory requirements.

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

(17 marks)

(Total: 25 marks)

Turn over

Question 4

A few weeks ago, Maitland District Council installed CCTV cameras in some of its local parks to deter antisocial behaviour. The CCTV system provided a direct visual and audio link to an operator who could inform the police of an incident in real time.

Three days ago, Jeff Redman, a well-known local businessperson, was suffering from a severe bout of depression after his house had burnt down. The CCTV operator watched him wandering aimlessly around one of the parks where he sat down on a bench. Jeff then pulled a knife from his pocket and started to self-harm by cutting into his arm several times.

The CCTV operator informed the police immediately and they were quickly on the scene to assist Jeff. After persuading him to give up the knife, they took him to the police station where his mental health was assessed by a doctor. Jeff was given appropriate medication and taken home a few hours later.

The next day, the local newspaper, The Noble of Maitland ('the Noble'), ran a story to show how effective CCTV could be and published a still photograph taken from the CCTV footage of the incident. The photograph showed Jeff self-harming. His face was clearly visible.

The article accompanying the photograph had the headline 'Knife-Brandishing Depressive Stopped!' and went on to name him and to say that he was 'an anguished soul saved from himself by the new CCTV system'. It then said that a doctor had assessed Jeff's mental health while he had been at the police station and that the Noble wished him well. It ended with the slogan 'Mental Health Matters!'

Jeff was highly distressed by the publication, and he was subject to ridicule at his golf club and by some of his business contacts.

Advise Jeff regarding the likely basis of a claim in damages he could take against the Noble and how the Noble might seek to defend the claim.

(25 marks)

End of the examination