



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 2024

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.
- A basic calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute book: ***Blackstone's Statutes on Public Law and Human Rights, 2022-2023, 33rd edition, John Stanton, Oxford University Press, 2023.***
- 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. With reference to the sources of the UK constitution, critically evaluate the arguments for and against the adoption of a written constitution in the UK.

(25 marks)

2. 'In practice... many countries do not aim for a strict separation of powers but opt for a compromise, where some functions are shared between the institutions of state. This is the case in the United Kingdom.'¹

(a) Describe the doctrine of the separation of powers as a constitutional principle.

(6 marks)

(b) Critically evaluate whether the statement above describes the extent of the separation of powers between the different institutions of state in the UK.

(19 marks)

(Total: 25 marks)

3. Critically evaluate:

(a) the extent to which the public interest defence in s4 of the Defamation Act 2013 protects the press's freedom of expression;

(15 marks)

(b) the extent to which s10 of the Contempt of Court Act 1981 enables journalists to lawfully protect their sources.

(10 marks)

(Total: 25 marks)

4. Critically analyse, with reference to the principle of proportionality, the extent to which Articles 10 and 11 of the European Convention on Human Rights affect the power of the police to control public protests.

(25 marks)

¹ LawWales, 'The three branches of government' (*Welsh Government*, 16 March 2021, updated 18 June 2021) <<https://law.gov.wales/three-branches-government>> accessed 9 May 2023

SECTION B

Answer at least one question from this section.

Question 1

The Trial by Jury Act 2020 ('the TBJA 2020') (**fictitious**) contained provisions stating that criminal trials that could result in the defendant being sentenced to at least one year's imprisonment must be heard by a jury. The TBJA 2020 also repealed all existing legislation permitting trials that could lead to at least one year's imprisonment to be heard without a jury.

Following a change of government at a general election, the new Parliament enacted the Criminal Proceedings Act 2023 ('the CPA 2023') (fictitious). The CPA 2023 did not expressly refer to the TBJA 2020 but provided that criminal trials involving highly complex allegations of fraud must be heard by a single judge who would be responsible for giving the verdict.

The House of Lords opposed the CPA 2023 and so it was passed by the House of Commons pursuant to the procedure set out in the Parliament Acts 1911 and 1949 and subsequently received royal assent.

Shortly after the CPA 2023 came into force, Matthew was charged with a multi-million-pound fraud involving the use of very complex financial instruments. If convicted, Matthew could be sentenced to at least 10 years' imprisonment. Matthew would like to have his case heard by a jury but the judge has ordered that a jury should be dispensed with pursuant to the CPA 2023. Matthew claims that the use of the Parliament Acts to remove the right to a trial by jury is unconstitutional and that in any event, the TBJA 2020 should prevail over the CPA 2023. The judge, however, believes that parliamentary sovereignty requires the Judge to abide by the CPA 2023.

Advise Matthew as to whether he has any grounds for arguing that the TBJA 2020 remains in force and that he is therefore entitled to a jury trial.

(25 marks)

Question 2

Pursuant to the Hospital Subsidies Act 2023 (fictitious) ('the Act'), the Medical Grants Agency ('the MGA') was set up to provide discretionary grants to parents of children who incurred significant costs as a consequence of a child having long-term hospital treatment. The Act defines a 'child' as being under 18 years of age when admitted to hospital and defines 'long-term treatment' as any treatment requiring a stay in hospital of three months or more. The Act also provides that no decision of the MGA can 'be challenged, appealed against, reviewed, quashed, or called into question in any court or tribunal'.

The MGA has a policy of making grants to families only where both parents spent extensive time with the child while the child was in hospital. Shruti's father, Jamal, is in good health and is a maths teacher at a private school. Shruti's mother, Latika, suffered a stroke five years ago and uses a wheelchair. She has very little movement in her legs and was therefore only able to spend a short time with Shruti while Shruti was in hospital.

Shruti's parents applied to the MGA for a grant in respect of the extra costs they had incurred as a result of Jamal staying with Shruti for an extended period at a specialist hospital 125 miles from their home. In addition to significant travel and hotel expenses, Jamal had to take a considerable amount of time off work. Shruti was 16 years old when she was admitted and spent five months in hospital before being discharged.

Shruti's parents' application was refused last week on the grounds that while Shruti had been in hospital only Jamal had spent an extended period with her. Additionally, the MGA wanted to encourage maths teachers to work at state schools, rather than private schools, owing to the shortage of maths teachers. It was therefore inappropriate to award a grant where one of the parents was working for a private school.

Shruti's parents also noticed that the rejection letter was signed by Dr Graham Ainslie in his capacity as deputy chief executive of the MGA. After her stroke, Latika had successfully sued Dr Ainslie for medical negligence and had been awarded damages of £150,000.

Advise Shruti's parents as to whether they can make a claim for judicial review of the rejection of their application and whether any such claim is likely to succeed.

(25 marks)

Question 3

Tuesday 10 October – 10.30 am

There have been fierce arguments between opposing groups of residents regarding the imposition of new traffic restrictions by the local council in Bellville. Some residents support them while others strongly oppose them. Some opponents of the restrictions were picketing the council offices when they were approached by supporters of the restrictions. A fight broke out and the police quickly arrived on the scene. PC Carey saw Rachel, a supporter of the restrictions, hit one of the opponents on his head with a baseball bat. PC Carey grabbed Rachel by the arm and said: 'Come with me, young lady, you shouldn't have hit that man. You're in big trouble now!' In the process, the baseball bat was lost.

Rachel tried to run away but PC Carey grabbed her by the neck and bundled her into the back of the police van. PC Carey held her in an armlock during the journey to the police station, causing her considerable pain.

Tuesday 10 October – 11.00 am

On arrival at the police station, the custody officer, Sergeant Latif, told Rachel that she was under arrest for assault occasioning actual bodily harm during the fight outside the council offices. Sergeant Latif complied with all statutory requirements for Rachel's detention, including informing Rachel of her rights. Rachel asked Sergeant Latif to let her wife, Gemma, know where she was. Sergeant Latif then consulted with an inspector, after which Sergeant Latif refused her request in writing on the grounds that Gemma might try to find and dispose of the missing baseball bat.

Wednesday 11 October – 2.30 pm

Rachel remained in police custody until the next day. Together, PC Budd and PC Sampson went to Rachel's home address. Gemma answered the door and the police officers told her they were going to search the house for the missing baseball bat. They did not find the baseball bat but did find three wild birds' eggs in a box belonging to Rachel. The police officers seized the eggs and on their return to the police station, Rachel was charged with assault occasioning actual bodily harm and the illegal possession of wild birds' eggs. She was then released on bail.

Please note: The offence of assault occasioning actual bodily harm is a triable either way offence AND you should assume that nothing else of further legal significance has occurred.

Advise the police on the legality of their conduct.

(Total: 25 marks)

Turn over

Question 4

The Department of Defence Procurement ('the DDP') (fictitious) has recently started an upgrade of cybersecurity in the UK to protect critical infrastructure, such as energy supplies and vital transport links, from hacking by hostile agents. The contract for the upgrade of cybersecurity systems was awarded to Abstotic Systems plc ('Abstotic'). The DDP now wants to cancel the contract on the advice of the UK's senior military leaders, namely that it is now more important to procure heavy artillery for the British Army, which is short of weapons as a result of supporting Ukraine's efforts to defend itself against the Russian invasion.

The DDP has already spent its whole budget for the current year and so does not have sufficient funds to pay Abstotic if it is to procure the required heavy artillery. Moreover, the Treasury is refusing to ask Parliament to provide further funding owing to record levels of national debt because MPs from the governing party have been calling for spending cuts.

Abstotic is now threatening to sue the DDP for breach of contract, claiming it has suffered losses of £1.5 billion owing to the contract's cancellation.

- (a) Advise the DDP as to whether it has any grounds for defending Abstotic's claim.

(12 marks)

Assume, for this part of the question only, that Abstotic commenced proceedings against the DDP for breach of contract.

Five weeks before the trial was due to start in the High Court, Zain, Abstotic's chief executive, was arrested and charged with fraud in relation to the cybersecurity contract between Abstotic and the DDP. While he was out on bail awaiting trial, Zain received a phone call from Karen, a civil servant in the DDP. Karen told Zain that she had seen a WhatsApp message from the Secretary of State for Defence Procurement to his chief adviser asking him to do everything possible to persuade the police to target Zain so that Abstotic would drop its claim.

Zain's solicitors have sought disclosure of the WhatsApp message, as they consider it will help his defence. The government has, however, refused to disclose the message, claiming that its contents must be kept secret on the grounds of national security.

- (b) Advise Zain as to whether he has any grounds for challenging the government's refusal to disclose the WhatsApp message.

(13 marks)

(Total: 25 marks)

End of the examination