



CHIEF EXAMINER REPORT

January 2025

LEVEL 6 UNIT 12 – PUBLIC LAW

The purpose of the suggested points for responses is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2025 examinations.

The 'suggested points for responses' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

On the very limited evidence available due to the small cohort size, there is nothing to suggest any concern.

Only two candidates sat the exam.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Section A

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Reference to the three branches of government • Functions and personnel of the three branches should be kept separate • Check and balances - separation needed as safeguard against arbitrary government • Executive/legislature relationship: <ul style="list-style-type: none"> • How Parliament can hold the government to account; e.g. votes of no confidence, parliamentary questions/debates, select committees • Areas of overlap, in particular the executive's dominance of Parliament • Executive and judiciary relationship: <ul style="list-style-type: none"> • Constitutional Reform Act 2005 (CRA): judicial appointments • Judicial review as check and balance • Other safeguards; e.g. security of tenure/constitutional conventions • Judiciary and legislature relationship: <ul style="list-style-type: none"> • CRA: removed Law Lords from the House of Lords and created Supreme Court • Judicial law-making through case law • Effectiveness of checks and balances between the three branches 	

Question 2	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Conventions as a non-legal source of the constitution • Not legally binding but observed in practice • Other sources of the constitution • Statute: Examples of constitutional statutes • Case law: Examples of constitutional case law • Royal prerogative: residue of the monarch's historical powers • Conventions and statute; e.g. Meeting of Parliament Act 1694, <u>Madzimbamuto v Lardner-Burke</u> (1968), <u>Miller v Sec of State for Exiting EU</u> (2017)) • Convention fills gaps, but statute will prevail over conventions • Conventions and case law; conventions not legally enforceable • Examples of conventions; e.g. ministerial responsibility • Prerogative powers vested in monarch, but by convention exercised by the government 	

Question 3	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Definition of defamation – libel/slander • Balance between competing interests - freedom of expression and protection of reputation • Truth (s 2) – defence enables press to impart information • Honest opinion (s 3) • Statement of opinion indicating basis of that opinion • Honest person could have held that opinion • Publication on matter of public interest (s 4) • Statement on matter of public interest • Defendant reasonably believed that publication was in the public interest. • Aim to protect serious investigatory journalism • Duty-interest test; factors to be considered and analysis • e.g. need to verify credibility of allegations • Other relevant case law, e.g. <u>Flood v Times</u> (2012) • Extent to which defences in ss 3 and 4 enable the press to discuss matters of public interest 	

Question 4a	11 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Section 1 Contempt of Court Act 1981 – ‘strict liability rule’: Elements of the rule • Publication: s 2(1) • ‘Substantial risk’ that the course of justice will be ‘seriously impeded or prejudiced’: s 2(2) • Proceedings must be active: s 2(3) and (4), Schedule 1 • Defences: • Innocent publication: s 3 • Contemporary report of legal proceedings: s 4 • Discussion of public affairs: Publication made as part of a discussion in good faith of public affairs does not infringe the strict liability rule if risk of prejudice is merely incidental: s 5 (<u>A-G v English</u> (1983)) 	

Question 4b	14 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Freedom of expression – Article 10 in relation to English legal system • Qualified right – limitations in Article 10(2) • Prescribed by law – must have clear legal basis • Justified by reference to legitimate aim; e.g. protection of the rights of others • Necessary/proportionate • Proportionality – application of Bank Mellat (2013) test: • Objective sufficiently important to limit fundamental right? • Measure rationally connected to objective? • Do measures go further than necessary? • Fair balance struck between the rights of the individual and the interests of the community? 	

Section B

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Amenability/ Standing • The Inspectorate is a public body • Public law matter • Standing • Timing – in particular ‘out of time’ application by Protea (<u>ex parte Jackson</u> (1985)) • Remedies – see below • AWM <ul style="list-style-type: none"> ○ Illegality: Ulterior purpose – excessive numbers of low paid workers in the locality (<u>Congreve v HO</u> (1976) and/or irrelevant consideration (<u>Padfield v Minister of Agriculture</u> (1968)) ○ Illegality: Fettering of discretion – over-rigid application of policy; Inspectorate should be willing to listen to someone with something new to say (<u>British Oxygen v Ministry of Technology</u> (1970)); ○ Illegality: Failing to take into account relevant considerations; that demand in Bristol exceeded supply and AWM’s exemplary record (<u>Roberts v Hopwood</u> (1925)) ○ Irrationality: definition of <u>Wednesbury</u> (1948) unreasonableness • Protea <ul style="list-style-type: none"> ○ Procedural impropriety: the giving of reasons. No common law duty to give reasons, but if a decision appears irrational, decision-maker will be required to give reasons; otherwise decision will be ultra vires (ex parte Cunningham (1991)) ○ Irrationality (as above) ○ Procedural impropriety: the rule against bias – Neville unlikely to have a direct interest (<u>Dimes v Grand Junction Canal</u> (1852)) but test for indirect interest probably met (<u>Porter v Magill</u> (2001)) • Remedy: quashing order 	

Question 2a	19 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>Arrest</p> <ul style="list-style-type: none"> • Power of arrest – s 24(3) PACE: reasonable grounds for suspecting an offence has been committed • Arrest necessary – s 24(5) PACE: to allow prompt and effective investigation of the offence (s 24(5)(e)) • Manner of arrest – fact of arrest and grounds, even if obvious (s 28(2) and (4)) • PC Rudzinski does not state facts and grounds of arrest adequately <p>Search of pub/seizure of broken glass</p> <ul style="list-style-type: none"> • Power to enter and search premises in which suspect was in when arrested or immediately before arrest for evidence relating to the offence, provided offence indictable (s 32(2)(b)) • Reasonable grounds for belief that there is evidence in premises relating to that offence (s 32(6)) • Search of pub therefore lawful • Police may seize anything which is on the premises if reasonable grounds for believing (s 19(1) and (2)) • that it is evidence in relation to an offence being investigated or any other offence; and 	

- that it is necessary to seize it on specified grounds

Detention at police station

- Arrest lawful once s 28(4) complied with
- Detention reviews not carried out every six hours (s 40)

Refusal of access to solicitor

- Right to consult a solicitor (s 58)
- May be delayed to prevent 'interference with or harm to evidence connected with an indictable offence'
- Written authorisation provided by officer of incorrect rank (sergeant, not superintendent)
- Samuel (1988) – police objections must relate to specific solicitor

Question 2b	6 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Section 76 – confession inadmissible if obtained by oppression or in circumstances which make it unreliable • Section 78 – discretion to exclude evidence if its admission would have adverse effect on fairness of proceedings • Right to a fair trial (Article 6 ECHR) 	

Question 3a	16 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>The March</p> <ul style="list-style-type: none"> • Section 12 Public Order Act 1986 (POA) – Senior police officer may give directions imposing conditions if he reasonably believes that public procession will cause serious public disorder/ damage/ disruption or has intimidatory purpose • Senior police officer (in response to s 11 notice before the march): Chief officer of police, i.e. Chief Constable • Superintendent Baptiste not chief officer of police • Grounds for reasonable belief: may disrupt activities at the market stalls, but unlikely to be sufficiently serious <p>The Meeting</p> <ul style="list-style-type: none"> • Section 14 POA – powers arise if meeting a 'public assembly' (s 16) • Definition of public assembly • Senior police officer may give directions imposing conditions if he reasonably believes that assembly will cause serious public disorder/ damage/ disruption or has intimidatory purpose • Grounds for reasonable belief – Disruption includes noise which may result in persons connected with organisation not being reasonably able, for a prolonged period of time, to carry on their activities • Assembly may generate noise, but unlikely to be for prolonged period • PC Goodman – not the most senior officer present <p>Stop and search</p> <ul style="list-style-type: none"> • Police power to stop and search for prohibited articles in public place (s 1(1) and (2) PACE) • Definition of 'prohibited article': 'offensive weapon' (s 1(7)/s 1(9)) 	

- Reasonable grounds for suspicion – whether toy knife provides grounds (s 1(3))

Question 3b	9 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Breach of the peace <ul style="list-style-type: none"> • Whether imminent threat to the peace arises from Martha's conduct • Whether conduct unreasonable and interferes with rights of others • Whether natural consequence of conduct is 'not wholly unreasonable violence' from protestors • Unlikely that above conditions are satisfied • Case law – e.g. <u>Bibby v Chief Constable of Essex Police</u> (above) • Failing to comply with s 14 condition <ul style="list-style-type: none"> • Offence if person knows or ought to know that the condition has been imposed • But condition was probably unlawful, so no offence committed 	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • No right to privacy in English law (<u>Wainwright v Home Office</u> (2006)) • Human Rights Act 1998: Horizontal effect of Convention rights (<u>Douglas v Hello! Ltd</u> (2005)) <ul style="list-style-type: none"> ○ Article 8: ECHR: right to private and family life ○ Development of breach of confidence as vehicle for enforcing Convention rights • Reasonable expectation of privacy <ul style="list-style-type: none"> ○ Analysis of newspaper article and photograph: whether newspaper entitled to publish them – individually and together • Article 10 ECHR: Newspaper's right to freedom of expression • Balancing Frank's right to privacy with the Daily Argus's freedom of expression <ul style="list-style-type: none"> ○ Proportionality: Where two Convention rights are involved (<u>Campbell v MGN</u> (2005)) ○ Whether Daily Argus was entitled to 'set the record straight' ○ Whether publication of details of attendance at clinic and photograph was disproportionate 	