



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 12 – PUBLIC LAW*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Public Law and Human Rights, 2020-2021, 30th edition, Robert G. Lee, Oxford University Press, 2020.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. 'The recognition of the fact that each branch of the State is separate and independent of the other does not ... mean that each branch stands in isolation from the other.'

(Source: Lord Thomas of Cwmgiedd, 'The Judiciary within the state – The relationship between the branches of the state', Michael Ryle Memorial Lecture, June 2017)

Explain what is meant by the principle of the separation of powers and, with reference to the separation of powers within the UK, critically evaluate Lord Thomas's statement.

(25 marks)

2. (a) Analyse how the Human Rights Act 1998 has incorporated the European Convention on Human Rights into UK law.

(9 marks)

- (b) Discuss whether the Human Rights Act 1998 should be replaced by a British Bill of Rights.

(16 marks)

(Total: 25 marks)

3. Evaluate the extent to which the law on privacy strikes a fair balance between the freedom of the press and the rights of the individual.

(25 marks)

4. Analyse the arguments for and against reforming the system for electing Members of Parliament in the UK, considering no more than **three** alternatives to the current system.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

As the result of UK government policy to promote international collaboration of climate change scientists, Parliament passed the Climate Change (Research Collaboration) Act 2020 ('the Act') [fictitious]. The Act established the Global Warming Grant Agency (GWGA), with the power to give discretionary grants to climate change scientists, to enable them to collaborate 'with scientists from countries which have ratified, and remain committed to, the Paris Agreement on Climate Change (the "Paris Agreement")'.

In the past week, the following events have occurred involving UK institutions:

- (i) The GWGA rejected an application by scientists from Kingswood University (KU) for a grant to go on a joint fact-finding trip to Brazil with climate scientists from South Africa, a signatory to the Paris Agreement. The trip aims to gain information about how Brazil uses biofuel as an alternative energy source. The letter of rejection from GWGA stated that three of the KU scientists had participated in a research project with Advance Oil Inc., a multinational oil company, and the GWGA wanted to show its disapproval of the oil industry by not giving grants to anyone who had been involved with it. Accordingly, it was inappropriate to award the KU scientists a grant.
- (ii) The GWGA awarded a grant to scientists from Conservation College (CC), to participate in an expedition to the Arctic in 2021 in collaboration with scientists from Texas, USA. Green Focus ('Focus') is a well-known nationwide pressure group, campaigning for improved use of green energy. Focus is concerned about the proposed grant, as the USA withdrew from the Paris Agreement with effect from November 2020. It has also learnt that the President of the GWGA is the mother of the CC scientist leading the expedition.
- (iii) The GWGA rejected an application from scientists at Queenstown Institute of Technology (QIT) for a grant to travel to Indonesia, a signatory to the Paris Agreement, to discuss collaboration on tidal energy projects. The reason given for the rejection was that the GWGA was following its usual practice of rejecting any application where the Environmental Association (EA), the professional body representing environmental engineers, objected. The EA had objected in this case as the QIT scientists were unsuitable applicants, because they had criticised an article in the EA's professional journal that had cast doubt on the need to reduce carbon emissions.

Advise the KU scientists, Focus and the QIT scientists whether they may respectively, make a claim for judicial review in respect of the issues affecting them.

(25 marks)

Question 2

Tuesday, 15 December 2020, at 00.15 am

A large number of people had congregated in Milnerton town square, to attend the local Christmas market. Many were drunk. PC Rhodes was called to the scene of the disturbance, which was now very loud and aggressive. Following a heated discussion about the two rival football teams in the area, a fight ensued. Emily was involved in the fight. While PC Rhodes was looking on, Emily punched and kicked another man, giving him a bloody nose. PC Rhodes placed Emily in an armlock and dragged her into the back of a police van by her hair. She was handcuffed and driven to the police station.

Tuesday, 15 December 2020, at 01.00 am

When Emily arrived at the police station, Sergeant Ladipo, the custody officer, told her that she was under arrest for assault occasioning actual bodily harm, and that she was to be held for questioning. Emily told Sergeant Ladipo that she wanted to speak to her solicitor. This request was refused, on the grounds that the solicitor might interfere with witnesses.

Tuesday, 15 December 2020, at 11.00 am

Emily remained in police custody. PCs Shore and Wright visited Emily's home address. The door was answered by Emily's husband, Seth. The police officers told Seth that they needed to search the house, as they suspected that offensive weapons were being held there. Seth refused to allow them to enter, asking them for a search warrant. The officers told him that they did not need one, as PACE allowed them to carry out the search. They then pushed past him and conducted a thorough but unsuccessful search for an offensive weapon. Seth was then arrested for obstructing the officers in the course of their duty.

Analyse the legality of the action taken by the police, **assuming that nothing further of legal significance has occurred.**

[NOTE TO CANDIDATES: The offence of assault occasioning actual bodily harm is triable either way.]

(25 marks)

Question 3

There has been considerable controversy regarding the construction by FreeWay England, a [fictitious] government company responsible for maintaining and improving major roads, of a proposed new bypass near Tregony, a town in Cornwall. Local residents formed a group, 'Scrap the Bypass' (STB), to campaign against its construction. STB sought judicial review of FreeWay England's decision to construct the bypass, but two days ago, the Court of Appeal ruled against STB. Immediately after the judgment, FreeWay England's chief executive, Donna, announced that construction of the bypass would start forthwith.

Members of STB communicated with each other via social media and arranged to travel to Exeter to stage a demonstration the next day at the regional offices of FreeWay England. They duly travelled by train the next day to Exeter. About 300 protestors started to march from the station towards FreeWay England's premises, planning to go through an extremely busy shopping centre.

As they marched towards FreeWay England's premises, PC Lynam stopped them, telling them that the march was illegal and that they should go no further. After discussions between PC Lynam and the leader of the protestors, PC Lynam informed them that they could proceed straight to FreeWay England's premises, but must avoid the shopping area. The protestors then marched to FreeWay England's premises, avoiding the shopping area.

As they moved on, PC Lynam thought that one of the protestors, Toby, might be carrying a knife, as he was wearing a T-shirt supporting anarchy and had a lot of tattoos. PC Lynam therefore stopped Toby and said: 'You're a suspicious-looking character. I'm going to search you.' Toby submitted to the search but complained to PC Lynam that he had no right to it carry out.

The protestors then gathered on a square outside FreeWay England's premises and chanted slogans protesting against the bypass. PC Lynam was then joined by Sergeant Moss. On learning that by chance Donna had been visiting FreeWay England's premises and was shortly due to leave, PC Lynam told the protestors that the bulk of them must disperse within the next 15 minutes and that only 20 of them could remain when Donna left.

(a) Consider the legality of the conduct of the police.

(18 marks)

As Donna left the building, the protestors, now only 20 in number, including Toby, chanted, 'Break Donna's nose! Break her nose!' and shook their fists at her. When Donna saw the protestors, she laughed and got into a taxi that she had ordered.

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

(7 marks)

(Total: 25 marks)

Question 4

The Daily Message, a [fictitious] national newspaper, recently published an article alleging that Cornelius, a well-known British film producer, had sexually assaulted a large number of women involved in the film industry. The article claimed that Cornelius had used his position of power to coerce young women into having sex with him in the hope that he might offer them a role in his films. It was accompanied by a photograph, reportedly taken by his former secretary, Alex, of him hitting a topless young woman in a bedroom in the Albany Hotel, Torquay. Alex had supplied The Daily Message with the photograph, saying that Cornelius should now be held to account for his actions.

The article reported that Cornelius rebutted these allegations, claiming that he had never stayed at the Albany Hotel and the photograph was a fake. The newspaper's editor then spoke with Alex, who stood by the genuineness of the photograph, but admitted that it had been taken in a room at the Graham Hotel, a different hotel in Torquay.

Kendra, The Daily Message's chief media correspondent, then posted on her own Facebook page a post describing Cornelius as 'a monster who has brought disgrace to the British film industry' through the behaviour described in The Daily Message.

Cornelius has now threatened to sue The Daily Message for defamation in relation to the article, and he has also threatened to sue Kendra for her post on Facebook.

Advise The Daily Message and Kendra respectively, whether they have any grounds for defending Cornelius's defamation actions.

(25 marks)

End of Examination Paper