

**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 2022**

**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, 2021-2022, 31st edition, John Stanton, Oxford University Press, 2021.***
- 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. (a) Explain the principles of:
- (i) parliamentary sovereignty, including the doctrine of implied repeal;
  - (ii) the rule of law.
- (16 marks)**
- (b) Critically analyse whether these two principles may come into conflict with each other.
- (9 marks)**
- (Total: 25 marks)**

2. (a) Describe the royal prerogative as a source of the constitution, how it may be abridged or modified and how prerogative powers are exercised in practice.
- (13 marks)**
- (b) Critically analyse the extent to which the courts adjudicate upon the existence of prerogative powers and the manner of their exercise.
- (12 marks)**
- (Total: 25 marks)**

3. "Case law has tipped the balance ever more in favour of a person's right to privacy against the competing interests of a free press."

Martin Evans 'Privacy v Freedom of Expression: How the Law has developed' *The Telegraph* (London, 18 July 2018)

Critically evaluate Evans' statement with reference to the approach taken by the courts when attempting to balance an individual's right to respect for their private life with the rights of the press to freedom of expression.

**(25 marks)**

4. Critically analyse the similarities and differences between administrative tribunals and courts of law, discussing why cases might be allocated to a tribunal rather than a court of law.
- (25 marks)**

## SECTION B

Answer at least one question from this section.

### Question 1

**Sunday 8 May 2022 3.00am**

PCs Mahmood and Budd were driving in their patrol car past Heath Park High School, a secondary school in Montaguville, when they saw some lights on in a classroom. Surprised that anyone was on the premises so early on a Sunday morning, they stopped to investigate and saw Andy and another man leaving the school premises via the school's main gate, which had been forced open. As soon as Andy had reached the pavement, they stopped him and demanded that he should show them the contents of a large bag. Andy refused so PC Budd grabbed the bag and opened it. He discovered several computer tablets inside. PC Budd told Andy that he was under arrest for being 'unbelievably stupid'. The other man, who was also carrying a large bag, ran away before the police officers could stop him.

PC Mahmood then entered the school premises and searched the classroom. She saw on the floor what looked like a sachet of cocaine, which she removed and took back to the police station to be tested.

**Sunday 8 May 2022 3.30am**

Andy arrived at the police station. On arrival, Sergeant Dyson told him that he was under arrest on suspicion of theft of the computer tablets and possessing controlled drugs and informed him of his rights. He was also to be detained while the police sought to obtain evidence of these offences, by questioning him. Andy's request to see a solicitor was accepted. However, Sergeant Dyson refused his request to inform his brother, stating that this would lead to the alerting of other persons suspected of having committed theft of the computer tablets but not yet arrested for it.

**Sunday 8 May 2022 4.30pm**

Andy was charged with theft and possession of controlled drugs and released on bail.

Advise the police on the legality of their conduct, **assuming that nothing further of legal significance has occurred.**

[**Note to candidates:** The offences of theft and possession of controlled drugs are triable either way.]

**(25 marks)**

**Turn over**

## Question 2

Assume that the Displaced Persons Act 2021 ('the Act') (fictitious) sets up the Refugee Grants Agency ('the Agency'). Under the Act the Agency is empowered to make annual grants to organisations looking after unaccompanied child refugees. Organisations applying for grants, under the Act, need to show that they can provide a good standard of care for the refugee children. Such grants will be payable in equal monthly instalments and the Agency may stop monthly payments if there is evidence that the organisation is no longer providing a good standard of care.

Section 18 of the Act states that, once an application has been made, there should be an oral hearing before the Agency.

The following situations have arisen:

- (i) Liberate the Children ('LTC') has just had its application for a grant refused without a hearing being held. The Agency explained, in its refusal letter, that other charities in the local area were making sufficient provision for any unaccompanied child refugees. LTC does not understand this, since it has received emails from several local charities stating that the situation is at crisis point and that they can no longer cope with the number of unaccompanied child refugees.
- (ii) The Zechariah Trust ('Zechariah') was awarded a grant for 2022. However, it has just been told that it will receive no further instalments of this grant for two reasons.

The first reason is that a member of the public has reported seeing child refugees in the care of Zechariah scavenging for food in bins. Zechariah states that the child refugees it looks after are well fed and cared for, as has been confirmed in a recent inspection. Zechariah considers that it has not been afforded a chance to put forward its case in response to these allegations and without the funding it will have to cease its operations.

The second reason is that the Home Office has instructed the Agency to stop making payments to Zechariah as it employed too many foreign nationals rather than British citizens, and it is the Agency's practice always to abide by Home Office instructions.

Advise LTC and Zechariah whether each can challenge the Agency's decisions by way of judicial review and, if so, upon what grounds.

**(25 marks)**

### Question 3

There have been concerns about children being tempted to copy the actions of those who jump vertically from a cliff or pier into the sea without equipment (known as 'tombstoning'). Parliament has therefore passed the Dangerous Jumping (Prohibition of Videos) Act 2021 ('the Act') (fictitious). Section 1 of the Act makes it a criminal offence to post any videos on social media showing any individuals jumping into the sea from a cliff or pier from a height of more than three metres without equipment. Since 2005 some 20 people have died while tombstoning and many others have been seriously injured.

Abimbola has posted several videos showing her tombstoning from cliffs in Cornwall from heights well above three metres. She has put age restrictions on these so that they cannot be viewed by under 18s. However, Abimbola has now been told that she will be prosecuted for an offence under s 1 of the Act. She believes that such a prosecution would infringe her right to freedom of expression.

- (a) Advise Abimbola whether she has any grounds for arguing that her prosecution constitutes an unjustified interference with her rights under Article 10 of the European Convention on Human Rights.

**(13 marks)**

Assume for this part of the question **only** that Abimbola was prosecuted and convicted following a jury trial in the Crown Court. She has now appealed against her conviction to the Court of Appeal (Criminal Division).

- (b) Explain whether the Court of Appeal (Criminal Division) should apply the Human Rights Act 1998 to protect any right of freedom of expression that Abimbola might have and, if so, how it should do so.

**(12 marks)**

**(Total: 25 marks)**

**Turn over**

#### **Question 4**

Oscar owns and operates a very expensive health spa in Bellville, England. Kofi, the MP for Bellville, recently made a speech during a parliamentary debate alleging that Oscar was using his health spa to facilitate money laundering. Additionally, Kofi alleged that at last year's Christmas dinner, at the health spa, several guests had suffered food poisoning as a result of being served undercooked turkey. Kofi further alleged that Oscar had covered this up and had failed in his duty to report the incident to the Food Standards Agency.

Subsequently, in a speech at a public meeting in his constituency, Kofi repeated the allegation about the cover-up of the food poisoning though did not refer to the money laundering. He also said that Oscar's conduct was a serious threat to public health and that he put profit before people.

Oscar instructed solicitors who wrote to Kofi, stating that the allegations were untrue; indeed, at the Christmas dinner in question the guests had been served duck and not turkey. In their letter, Oscar's solicitors threatened to sue Kofi for defamation unless he apologised and agreed to pay Oscar substantial damages as Oscar had lost business due to the allegations. Kofi replied that he had checked with his source, a former chef at the health spa who had been employed there last Christmas. The chef confirmed that duck had been served, not turkey, but the duck had in any event caused the food poisoning. Kofi therefore stood by his allegations.

Advise Kofi whether he has any grounds for defending Oscar's defamation action in relation to the allegations of money laundering and the cover-up of the food poisoning.

***(25 marks)***

**End of the examination**

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