



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, 2017-2018, 27th edition, Robert G Lee, Oxford University Press, 2017.**
- 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**

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

1. '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. In the UK, the powers of Parliament, Government and courts are closely intertwined.'

(Richard Benwell and Oonagh Gay, *The Separation of Powers*, Standard Note: SN/PC/06053, House of Commons Library, 2011.)

- (a) Analyse the benefits of ensuring the separation of powers in a political system.

(6 marks)

- (b) Critically evaluate the extent to which Benwell and Gay accurately describe the extent of separation of powers in the UK.

(19 marks)

(Total: 25 marks)

2. Evaluate the effectiveness of the provisions of the Human Rights Act 1998 in safeguarding the rule of law in the United Kingdom.

(25 marks)

3. (a) Define constitutional conventions and explain how they govern the exercise of the royal prerogative.

(15 marks)

- (b) Analyse the extent to which the courts are willing to scrutinise the scope of the royal prerogative.

(10 marks)

(Total: 25 marks)

4. Evaluate the extent to which the law on privacy protects the freedom of the press.

(25 marks)

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

Question 1

In order to implement the government's policy of devolving power to the English regions, Parliament enacted the Devolution in England Act 2016 ('the DEA 2016') [fictitious], establishing the Assembly of the North ('the Assembly') and granting it specified legislative powers over the northern counties of England. In particular, the DEA 2016 granted the Assembly the power to charge a different rate of Stamp Duty Land Tax ('SDLT') compared to the rest of England for properties in the northern counties.

Following a change of government at a general election, the new Parliament enacted the Powers of Parliament Act 2018 ('the PPA 2018') [fictitious]. The PPA 2018 did not expressly refer to the DEA 2016, but provided that the Assembly 'shall no longer have any powers' in relation to SDLT.

The House of Lords opposed the PPA 2018, and so it was passed by the House of Commons pursuant to the procedure set out in the Parliament Acts 1911 and 1949 and it subsequently received royal assent.

Shortly after the PPA 2018 came into force, Graham, the Presiding Officer of the Assembly, applied to the High Court for a declaration that the DEA 2016 remained in full force and that the Assembly retained its powers regarding SDLT. Graham has stated that he believes the use of the Parliament Acts in this situation is unconstitutional and that, in any event, the DEA 2016 should prevail over the PPA 2018.

Advise Graham whether he has any grounds for arguing that the DEA 2016 is still in force and that the Assembly has retained its powers regarding SDLT.

(25 marks)

Question 2

Assume that the Renewable Energy Act 2017 [fictitious] ('the Act') empowers the Secretary of State for Energy and Development [fictitious] ('the Secretary of State'), following an application by a district council, to make an order permitting land to be used for the purpose of constructing a wind farm. The aim of the Act is to promote the use of renewable energy.

The Act provides that, in making an order, the Secretary of State must take account of the need to minimise the effect on the environment, and specifically on wildlife. Section 27 of the Act provides that the Secretary of State 'shall' hold a public inquiry before making a final decision. Section 43 of the Act provides that the decision of the Secretary of State 'will be final and cannot be challenged in any court proceedings whatsoever'.

Queenstown District Council applied for an order authorising land at Kenton-on-Sea, Cumbria, to be used for a ten-turbine wind farm. The Secretary of State granted this application, having decided not to hold a public inquiry, as there was already a wind farm located four miles away from the proposed site, and a public inquiry had been held before an order was granted on that occasion. The Secretary of State also stated that an important factor in her decision was that the wind farm would contribute to the economic regeneration of Kenton-on-Sea.

The National Association for the Protection of Birds ('NAPB'), a (fictitious) charity that seeks to promote conservation and protection of birds, is concerned about the impact of the wind turbines on birdlife, as the wind farm will be situated only 100 metres from the Kenton-on-Sea Wildlife Conservation Area. Furthermore, the wind farm will be positioned on the route flown by an endangered species of migrating bird. The NAPB has also discovered that the Secretary of State's son is a shareholder in International Turbines plc, the company that is proposing to construct the new wind farm.

Advise the NAPB whether it may make a claim for judicial review.

(25 marks)

Turn over

Question 3

The government has agreed to provide accommodation to a number of refugees from (fictitious) Ribosia, who are fleeing civil war in their country. Marcus has heard that a number of these refugees are to be housed in Bellville, where he lives. Marcus has given notice to the police that he intends to hold a protest march through the centre of Bellville on Saturday afternoon, which will end with a meeting in the outdoor car park for the newly built local cinema, to object to the government's proposals. He has informed the police that he expects that at least 50 people will attend and maybe many more. The owners of the cinema, who also own the car park, have stated that they strongly object to Marcus's plans, as the meeting will disrupt cinema-goers trying to enter the cinema.

The Chief Constable of Bellville is concerned about Marcus's plans, as there is already considerable local feeling against the refugees in Bellville. He is also concerned that as the march is taking place on a Saturday afternoon, it will cause serious traffic jams and prevent people from being able to get to the shops.

- (a) Advise the Chief Constable whether he has any power to take action to control or prohibit the march and the meeting before they take place.

(16 marks)

Assume **for part (b) only** that the march took place lawfully. During the march, Amanda, one of the marchers, swore at PC Chambers, a police officer who was observing the march. PC Chambers then arrested her, telling her: 'You are under arrest for behaving like a complete idiot'. PC Chambers then took Amanda to the nearest police station, where she was told that she had been arrested under s.4 Public Order Act 1986 for using abusive language.

- (b) Consider the legality of the action taken by the police.

(9 marks)

(Total: 25 marks)

Question 4

The Sunday Tribune, a (fictitious) national newspaper, recently published an article by Shireen, its political editor, alleging that Rufus, the governing party's MP for Maitland North, had accepted bribes from a major bank. The article claimed that Rufus had accepted large cash payments, on the understanding that he would lobby government ministers to withdraw a bill imposing stricter regulations on banks. It also reported Rufus's denial of the allegations (referred to below). The government subsequently withdrew the bill. A separate editorial described Rufus as 'parliamentary vermin who had undermined trust in democracy' through his acceptance of bribes.

Shireen's article stated that she had obtained the information from Neville, Rufus's constituency agent. While eating a meal in The Vineyard, a restaurant in Maitland North, Neville had overheard a conversation between Rufus and one of the bank's directors, who had handed Rufus a bag containing £50 notes. Shireen phoned Rufus and asked him to comment on the allegations. Rufus denied the allegations, stating that he had never met any representatives of the bank concerned. Following publication of the article, Neville informed Shireen that the meeting between Rufus and the bank's director had actually taken place in The Tennessee Spur, a different restaurant in Maitland North, but otherwise he stood by his story.

Rufus has now threatened to sue the Sunday Tribune for defamation in relation to Shireen's article and the editorial.

Advise the Sunday Tribune whether it has any grounds for defending Rufus's defamation action.

(25 marks)

End of Examination Paper

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