



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 2018-2019, 28th edition, Robert G. Lee, Oxford University Press, 2018.**
- 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. 'Judicial independence is crucial to the courts for the fulfilment of their constitutional role. It is...foundational to and indispensable for the discharge of the judicial function in a constitutional democracy based on the rule of law....'

(Judgment of the South African Constitutional Court, para. 36, Justice Alliance of South Africa and Others v President of the Republic of South Africa and Others (2011) ZACC 23)

- (a) Discuss this statement with reference to the constitution of the United Kingdom, explaining what is meant by the constitutional principle of the rule of law and why judicial independence is of particular constitutional importance.

(10 marks)

- (b) Evaluate, with reference to the principle of the separation of powers, the degree to which the UK constitution provides for separation of the judiciary from the executive and the legislative branches of state.

(15 marks)

(Total: 25 marks)

2. Analyse, with reference to other sources of the constitution, the functions which constitutional conventions fulfil in the UK constitution.

(25 marks)

3. (a) Analyse the public interest defence provided for in s.4 Defamation Act 2013 and evaluate the extent to which it protects the press's freedom of expression.

(15 marks)

- (b) Analyse the extent to which journalists are lawfully able to protect their sources.

(10 marks)

(Total: 25 marks)

4. Critically evaluate the extent to which the Freedom of Information Act 2000 strikes an appropriate balance between allowing the public to obtain access to information and the need for sensitive information to have protection from disclosure.

(25 marks)

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

Question 1

Assume that, with the aim of encouraging more recycling and improving provision for the recycling of plastics, Parliament passed the (fictitious) Protection of the Environment Act 2018 ('the Act'). The Act created the Plastics Recycling Agency ('the PRA'), which is responsible for regulating the number and standard (including any environmental impact) of plastics recycling plants. Any business wishing to operate a plastics recycling plant must apply to the PRA for a licence. The Act also requires the PRA to publish a notice of any application for a licence for a new recycling site at the proposed site itself, online and in local media.

- (i) Anglo-Californian Solutions plc ('Anglo') recently applied to the PRA for a licence to operate a new recycling plant in the Milnerton area of Wessex. The application was refused last week on the basis of the PRA's policy of granting only one licence for a recycling plant in any one area; the PRA believes that its policy will improve the overall efficiency of the system, by providing economies of scale. Best Town Ltd, a small local company, has been granted the licence for the Milnerton area. Anglo has evidence that Best Town Ltd will be unable to meet the increasing local demand for plastics recycling.
- (ii) The PRA also granted a licence to ExtraRec Ltd ('ExtraRec') for a new recycling plant adjacent to a nature reserve in Wessex four months ago. In giving its reasons for the decision, the PRA stated that ExtraRec had demonstrated that its proposals would help to stimulate economic growth in a deprived part of the country.

The Rural Land Trust ('RLT'), a group which campaigns nationwide on environmental issues, is concerned that, although the notice about the licence application was published in a local newspaper, it was not published online or at the site itself. This meant that most users of the nature reserve were unaware of the proposed recycling plant and could not put forward their concerns regarding its environmental impact. Due to the limited publicity regarding the proposal, the RLT only heard about the decision to grant ExtraRec a licence a few days ago.

Advise Anglo and the RLT whether each may make a claim for judicial review of the decisions affecting them and whether any such claim is likely to succeed.

(25 marks)

Turn over

Question 2

Friday 3.30 pm

A bystander observed Charlie taking cash out of an ATM using several different cards. He phoned the police, and PC Eppes quickly arrived at the scene. PC Eppes asked to look at the cards, and Charlie handed them over. PC Eppes inspected the cards and saw that there were debit cards all in different names. PC Eppes then told Charlie, 'I am arresting you, as you have so many different cards in your possession'.

Charlie asked PC Eppes why that was a problem, and PC Eppes replied, 'If you use your brain for one second, it should be obvious'.

Friday 4 pm

Charlie arrived at the police station. On arrival, he was told that he was under arrest for stealing debit cards and was informed of his rights and entitlements. He was also told by Sergeant Granger, the custody officer, that he was being detained for questioning. Charlie asked to see a solicitor, but Sergeant Granger refused, stating that this 'may alert your accomplices'.

Charlie was then interviewed. He told the police that the debit cards were given to him by his flatmates, as they were all buying a present for a friend's 21st birthday and Charlie had offered to get the money from a nearby ATM. The police phoned Charlie's flat and the mobile numbers he gave them for his friends, but there was no reply. Charlie was locked in a cell and was left there.

Friday 7 pm

The police went to Charlie's flat to search it for further debit cards. There was no-one in, so they broke down the door. They searched his flat, but found no debit cards. However, in Charlie's room they found and seized some ecstasy tablets.

Friday 9.30 pm

One of Charlie's flatmates phoned the police, to say that they had returned home from the pub to find that their flat had been broken into. The flatmate confirmed Charlie's story. Charlie was charged with possessing illegal drugs and was released.

(a) Consider whether the police acted lawfully in the above events.

(NOTE TO CANDIDATES: Assume that nothing else of legal significance occurred.)

(18 marks)

(b) Consider whether the ecstasy tablets will be admissible in evidence, if Charlie is prosecuted for possession of a controlled drug.

(7 marks)

(Total: 25 marks)

Question 3

Jessica is the Secretary of State for National Security (fictitious). An extremist group of anarchists has threatened to disrupt the next general election. The anarchists are opposed to democratic elections. Jessica therefore proposes to submit a Bill to Parliament banning marches by more than 20 people during the three weeks immediately preceding the election.

Amita, an opposition MP, made the following claims in a speech to Parliament:

- the Bill contravenes an absolute human right which can never be interfered with and, in any event, no grounds for interfering with the right in question exist;
- human rights legislation prevents Jessica from submitting the Bill;
- Parliament does not have the power to pass the Bill; and
- if the Bill ever became an Act of Parliament, the courts would declare it invalid under human rights legislation.

Advise Jessica as to the extent to which Amita's claims are correct.

(25 marks)

Turn over

Question 4

- (a) Harvey is the leader of the Monarchist Tendency ('MT') (fictitious), a group that campaigns for the restoration of an absolute monarchy in the UK. MT plans to hold a protest march in Parktown North, the Prime Minister's constituency, as the Prime Minister has vehemently denounced the MT's views.

Harvey gives six clear days' notice of the proposed date and route of the march to the police, by handing in a notice at Parktown Police Station. The marchers are planning to march past the offices of the Reform Party (fictitious), the party that the Prime Minister leads. The Chief Constable for the Parktown area serves a notice prohibiting the march from going past the Reform Party's offices.

The MT complies with the Chief Constable's notice and the march takes place peacefully. When the march ends, about 100 protestors gather in a nearby public park and Harvey starts a speech, in which he abuses the Prime Minister. The protestors start to chant, 'Sack the Prime Minister! Sack the Prime Minister!'

Police Inspector Pearson and Sergeant Ross are watching the events unfold. While Inspector Pearson is looking on, Sergeant Ross approaches the protestors and shouts to them: 'You've got 10 minutes, and then you must leave this park. You're upsetting the children in the playground.'

Consider the legality of the actions taken by the Chief Constable and by Sergeant Ross.

(11 marks)

- (b) Shortly after the events in part (a) took place, Harvey attended another protest, at which he was arrested and charged with a serious public order offence. While out on bail awaiting trial, he met Katrina, a recently retired senior civil servant. Katrina told him that she had seen a memo from the security services to the Prime Minister regarding the threat posed by the MT. The memo concluded: 'The security services recommend that all necessary steps should be taken to eliminate the MT's leadership'.

Harvey's solicitors have applied for disclosure of the memo, as they believe it will help his defence. The government has, however, refused to disclose it, claiming that national security requires it to be kept secret.

Advise Harvey whether he can challenge the government's refusal to disclose the memo.

(14 marks)

(Total: 25 marks)

End of Examination Paper

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