

26 January 2022
Level 6
PUBLIC LAW
Subject Code L6-12

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, 2021–2022, 31st edition, Robert G. Lee, Oxford University Press, 2021.**
- 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.

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

1. 'A separation of powers in the purest sense is not, and never has been, a feature of the UK constitution. An examination of the three powers reveals that in practice they are often exercised by persons or bodies which exercise more than one such power. Thus, for example, there's a broad overlap between the legislative and executive in the UK constitution.'

(Neil Parpworth, *Constitutional and Administrative Law*, 11th edition, OUP, 2020, para 2.7)

- (a) Describe the principle of the separation of powers in a constitution. **(6 marks)**
- (b) Critically evaluate the extent to which Parpworth accurately describes, above, the extent of the separation of powers in the UK. **(19 marks)**

(Total: 25 marks)

2. Critically evaluate the extent to which the concept of 'retained EU law' provided for by the European Union (Withdrawal) Act 2018 has ensured legal continuity in the UK following the UK's exit from the European Union.

(25 marks)

3. Critically analyse the following concepts as grounds for judicial review:

(a) irrationality; **(7 marks)**

(b) the rule against bias; **(8 marks)**

(c) legitimate expectation. **(10 marks)**

(Total: 25 marks)

4. Critically evaluate the extent to which the provisions of the Human Rights Act 1998 safeguard the rule of law in the UK.

(25 marks)

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

Question 1

The House of Lords (Reform) Act 2019 ('the HLRA 2019') [fictitious] contained provisions restricting the membership of the House of Lords to 800 members, as the government was concerned about its size. Section 7 of the HLRA 2019 included a provision stating that it could not be amended or repealed, unless this was voted for by at least a 70% majority in the House of Commons.

Recently, following a change of government, Parliament passed the Constitution (Miscellaneous Provisions) Act 2021 ('the Constitution Act 2021') [fictitious]. Although the Constitution Act 2021 contained no reference to the HLRA 2019, it provided that there should be no limit on the number of members of the House of Lords. About 55% of MPs voted in favour of the Constitution Act 2021 and Royal Assent was granted notwithstanding the lack of the 70% majority.

Shortly after the Constitution Act 2021 came into force, the Prime Minister announced the appointment of 50 new life peers. Baroness Damon, the Lord Speaker of the House of Lords, stated that she was opposed to the enlargement of the House of Lords and so she applied to the High Court for a declaration that the appointment of the new life peers was void. Her main argument is that the HLRA 2019 is still in force, either because the procedure set out in s.7 was not followed or because it had not been expressly repealed by the Constitution Act 2021.

Advise Baroness Damon whether she has any grounds for relying on the HLRA 2019 to challenge the appointment of the new life peers.

(25 marks)

Question 2

The Senedd Cymru (the Welsh Parliament) passed an Act of Senedd Cymru, the Welsh Tourism Act 2021 [fictitious], promoting tourism in Wales. The Government of Wales Act 2006 (as amended) does not list tourism as a devolved matter. Zoe, the Secretary of State for Tourism and International Cooperation [fictitious] in the UK government, believes that the Welsh Tourism Act is not in the best interests of the UK as a whole.

Zoe claimed in a recent speech that the Senedd Cymru did not have the power to pass the Welsh Tourism Act and that, in any event, the UK Parliament had the power to override it.

(a) Advise Zoe whether her claims are correct.

(7 marks)

In response to a parliamentary question from an opposition MP, Zoe claimed that Stanley, the Minister in the Welsh Government responsible for tourism, had promoted the Welsh Tourism Act because he had been bribed to do so by criminal elements in the Welsh tourist industry. This allegation is untrue. However, several newspapers published the allegation in their reports of the proceedings in Parliament.

(b) Advise Stanley whether he has been defamed and, if so, whether he can bring defamation proceedings against Zoe and the newspapers.

(6 marks)

To help tourism in the UK to recover from the COVID-19 pandemic, the Department for Tourism and International Cooperation [fictitious] set up a fund to assist the tourist industry in England. Tourist businesses were entitled to apply online for grants to assist their recovery from the pandemic. However, due to the confusing nature of the criteria for awarding grants and problems with the online application system, less than 10% of the amount budgeted for grants in the last tax year was actually spent. The Leader of the Opposition therefore called upon Zoe to resign due to the inefficiency of the grant system and her false allegations against Stanley.

Rohit, one of Zoe's Cabinet colleagues, believes that the fund to help tourist businesses should be scrapped due to its inefficiency, but the Cabinet decided that it should continue. Rohit has written an article for a national newspaper calling for the scrapping of the fund; the article is due to be published tomorrow.

(c) Advise Zoe and Rohit regarding the constitutional consequences of the above facts.

(12 marks)

(Total: 25 marks)

Question 3

PC Pearson and PC Randall were on patrol in Bakerford High Street. They were told over their radio that a burglary had just taken place at a nearby sports shop. They were also told that a witness had seen a man wearing a black hooded top and jogging pants, and carrying a 'SportStyle' bag, running away from the shop.

Monday 11 October 2021 – 8.35 am

PCs Pearson and Randall saw Jack on the other side of the High Street. Jack was returning home after an early morning visit to his gym. He was wearing a black anorak and black tracksuit bottoms and was carrying a 'SportStyle' bag. The officers asked Jack to stop. PC Pearson told Jack that he had reason to believe that Jack was carrying stolen goods and so intended to search him. When Jack asked him for identification, PC Pearson grabbed his arm and forced it behind his back. PC Randall grabbed the 'SportStyle' bag. Inside the bag he found a new pair of trainers, which Jack had bought the previous day. PC Pearson then said to Jack, 'You're coming with us, because you've obviously been up to no good'.

Monday 11 October 2021 – 8.50 am

Jack was taken to Bakerford Police Station and was brought before the custody officer, Sergeant Hill. Sergeant Hill told Jack that he was under arrest on suspicion of burglary from the sports shop and was to be detained while the police decided what to do next. Jack was concerned that he would be late for work and asked Sergeant Hill to inform his employer of his arrest. Sergeant Hill refused Jack's request, on the basis that this might alert other potential suspects.

Monday 11 October 2021 – 9.00 am

Jack was interviewed by PC Pearson. Jack explained that he had bought the trainers the previous day and that he still had the receipt at his flat. Jack was then placed in a cell.

Monday 11 October 2021 – 4.20 pm

PCs Pearson and Randall went to Jack's flat to look for more stolen goods. Jack's wife, Rebecca, told them that they could not come in, but the officers entered anyway. In the kitchen they found the receipt for the purchase of the trainers.

Monday 11 October 2021 – 8.30 pm

Jack was released by Sergeant Hill.

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 burglary is triable either way.]

(25 marks)

Question 4

A march was due to take place from the High Street to the Market Square in Parktown, to demonstrate against the visit to the town of the unpopular President of the Republic of Zembla [fictitious]. Kevin, the organiser of the march, gave appropriate notice of the march to the police under the Public Order Act 1986, and the police did not impose any conditions in advance of the march.

On the day of the march, over 100 demonstrators assembled. The demonstrators marched down the High Street towards the Market Square. As the demonstrators turned into the Market Square, they met some of the President's supporters. The demonstrators hurled abuse, and one of them threw a bottle towards the President's supporters.

PC Akinluyi was called to the scene. He was able to keep the two groups separate, but a shop window was broken by a missile thrown by one of the demonstrators and traffic on the High Street was blocked. PC Akinluyi told the demonstrators that they could not enter the Market Square. Kevin protested that PC Akinluyi had no right to stop the demonstrators entering the Market Square, but PC Akinluyi refused to change his mind.

The following day, Toby and Samaira were handing out leaflets to passers-by outside the Zemblian Embassy in London. The leaflets called for economic sanctions to be imposed against the Republic of Zembla. When Toby and Samaira started to address passers-by as to why sanctions should be imposed, they were heckled by members of the embassy staff.

PC Bradley and Sergeant Rivas were called to the scene. Toby continued speaking but heckling from the embassy staff became increasingly hostile and threatened violence. PC Bradley then told Toby and Samaira that they must leave in 10 minutes' time.

- (a) Advise the police on the legality of their conduct.

(13 marks)

Toby ignored PC Bradley's direction referred to above and punched one of the embassy staff, so he was arrested and charged with public order offences. The day before his trial at the Central London Crown Court, the Zemblian News, an online news website published in the United Kingdom aimed at the Zemblian community in the UK, published an article stating:

'Condemn the Protestors!

Toby Nicholas, the leader of protests against our beloved President, is a terrorist. The Zemblian people call upon the British court to convict and imprison him.'

- (b) Advise the Zemblian News whether it may incur criminal liability under the Contempt of Court Act 1981 as a result of its article.

(12 marks)

(Total: 25 marks)