



## 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 2016–2017, 26th edition, Robert G Lee, Oxford University Press, 2016.**
- 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. (a) Explain the principles of:
- (i) parliamentary sovereignty;
  - (ii) the rule of law.
- (17 marks)**
- (b) Analyse whether there any factors which render these two principles incompatible.
- (8 marks)**  
**(Total: 25 marks)**
2. Analyse the degree of flexibility within the UK constitution with reference to the way in which each source may change over time.
- (25 marks)**
3. Analyse:
- (a) the powers of the police under the Police and Criminal Evidence Act 1984 to arrest a person without a warrant;
- (12 marks)**
- (b) the common law powers of the police to arrest a person without a warrant;
- (8 marks)**
- (c) how the police should exercise their powers of arrest under the Police and Criminal Evidence Act 1984.
- (5 marks)**  
**(Total: 25 marks)**
4. Explain how the courts use the principle of proportionality in judicial review proceedings and, in particular, in considering claims based on breaches of Convention rights (as defined in the Human Rights Act 1998) and European Union law.
- (25 marks)**

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

**Question 1**

Jane is the new Secretary of State in the Department for Educational Affairs (fictitious) ('the DEA'). Her permanent secretary has drawn her attention to three important matters which are outstanding.

A draft Bill before Parliament ('the Bill') proposes significant changes to the education systems in England and Scotland. The Scottish government opposes the Bill on the grounds that it is unconstitutional.

- (a) Advise Jane whether the opposition of the Scottish government to the Bill has any legal validity.

**(5 marks)**

There have been problems concerning the Advancement of Education Act 2010 (fictitious) ('the 2010 Act'):

- (i) Jane's predecessor had tried to encourage schools to organise more school trips for their pupils. However, there have been complaints that the 2010 Act has imposed excessive red tape on schools, making it very hard for them to organise school trips involving overnight stays without making them excessively expensive. Jane would therefore like to amend the 2010 Act to make it less burdensome on schools.
- (ii) The European Union adopted Directive 2015/137 (fictitious), which requires Member States to enact legislation affecting vocational training by 28 February 2017. Jane has found that no steps at all have been taken to implement the Directive which would involve amendments to the 2010 Act.
- (b) Advise Jane whether she can use delegated legislation to deal with these two matters and, if so, whether parliamentary approval would be required.

**(10 marks)**

Jane's predecessor had commissioned a major school building programme, pursuant to which the DEA had awarded a contract worth £1.5 billion to Espin Construction plc ('Espin'), which commenced last year. The Cabinet has now decided that Jane's budget for 2017/18 cannot accommodate the further stage payments due to Espin under the contract. The government is committed to reducing the budget deficit, and the Chancellor has said that he cannot provide the DEA with the funds needed to pay Espin. The Chancellor is confident that Parliament supports his approach and under no circumstances would it approve the extra funding needed by the DEA. The DEA is unable to make sufficient budget cuts elsewhere to enable it to pay the sums due to Espin, as it has recently agreed a backdated pay award for teachers. Espin is now threatening to sue the DEA.

- (c) Advise Jane whether the DEA has any grounds for defending Espin's claim.

**(10 marks)**

**(Total: 25 marks)**

## Question 2

Following public concern about poor work carried out by locksmiths and the difficulty in finding locksmiths at weekends, Parliament enacted the Locksmiths Act 2015 (fictitious), establishing the Locksmiths Regulation Authority ('the LRA') and giving it the power to grant certificates of competence. While it will still be legal to practise as a locksmith without a certificate of competence, the LRA will encourage the public to use locksmiths who hold certificates.

The LRA has issued guidelines stating that certificates will normally be awarded to locksmiths if they:

- have practised as locksmiths in the UK or another EU country for at least five years or have a qualification issued by an approved institution located within the EU;
  - have adequate insurance;
  - are willing to provide locksmith services on 15 weekends in each year.
- (i) Eki's application for a certificate was recently refused on the grounds that she had only practised as a locksmith in the UK for three years, and she did not have a qualification issued by an approved institution located within the EU. Before coming to the UK, she had practised as a locksmith in Nigeria for 18 years and can produce a certificate of competence issued by the Nigerian authorities.
- (ii) Graham was granted a certificate four months ago, even though he has never practised as a locksmith and has no relevant qualifications. The UK Locksmiths Forum ('the Forum'), is a not-for-profit organisation of locksmiths set up to promote the level of skills and ethics within the industry. The Forum discovered last week, when the LRA published its annual report, that Graham's father is a senior employee of the LRA.
- (iii) Rebecca's application for a certificate was recently refused although she fulfilled all the conditions set out in the LRA's guidelines. The LRA has refused to give any reasons for its decision.

Advise Eki, the Forum and Rebecca whether each may make a claim for judicial review.

**(25 marks)**

**Turn over**

### Question 3

Lancelot has recently been elected as Mayor of Bathurst. In a speech he made shortly after his election, he made an unexpected announcement that he planned to ban all trade union activity among employees in Bathurst City Council. The trade unions representing City Council employees held a meeting the next day in a church hall that they had hired for the purpose. After the meeting, about 250 employees decided to stage a march protesting against Lancelot's plans. The protestors decided to march first to Lancelot's house and then to Bathurst City Hall.

As they marched towards Lancelot's house, they were stopped by PC Norton, who told them that the march was illegal and that they should go no further. After discussions between PC Norton and the leader of the protestors, PC Norton informed them that they could proceed straight to the City Hall, but must avoid Lancelot's house. The protestors then headed towards the City Hall.

As they moved on, PC Norton thought that one of the protestors, Spencer, was behaving suspiciously as he was wearing sunglasses on a cloudy day in the middle of winter and so might be the sort of person who would carry a knife. He therefore stopped him and said, 'I don't like the look of you. I am going to search you.' PC Norton then attempted to search Spencer, but Spencer pushed him out of the way and rejoined the protestors.

The protestors then gathered on a square outside the City Hall and chanted slogans calling on Lancelot to resign and denouncing him as a fascist dictator. PC Merriman and Sergeant Chapman kept watch on them. On learning that Lancelot was due to arrive at the City Hall in about 30 minutes' time, PC Merriman told the protestors that the bulk of them should disperse within the next 30 minutes and only 15 of them could still be there when Lancelot arrived. By the time Lancelot arrived, there were only 15 protestors left, including Spencer. As Lancelot arrived, Spencer and most of the other protestors were chanting, 'Execute Lancelot! Burn him at the stake! We're going to cut your throat.' When Lancelot heard the chanting, he smiled and waved at the protestors.

Consider the legality of the conduct of the police and of Spencer.

**(25 marks)**

#### **Question 4**

Harold Matthewson is a well-known campaigner against private education, and he has frequently called for the abolition of private schools. The following article recently appeared in the National Mercury ('the Mercury'), a national newspaper.

##### **'Harold's Horrible Hypocrisy**

Harold Matthewson has been the scourge of private schools and has campaigned tirelessly to get them abolished. Well, it seems that he has undergone a sudden conversion. Last month his eldest child, an 11-year-old boy, started at St Andrew's College in Leeds, a leading private school. Obviously state education is not good enough for his offspring! Harold's decision has shocked fellow campaigners, who have attacked his hypocrisy.'

The article was accompanied by a photograph of Harold standing near a bus stop. The photograph had the caption, 'Harold after dropping his son off at top private school'.

Although Harold accepts the factual accuracy of the article and photograph, he has started proceedings in the High Court alleging that his right to privacy has been infringed. Asserting its right to freedom of expression, the Mercury intends to defend this claim.

- (a) Explain the basis on which Harold may bring his claim and the basis on which the Mercury may seek to defend it.

**(20 marks)**

Assume, for this part of the question only, that prior to the publication of the article and photograph referred to above, the High Court had issued an injunction addressed to the Sunday Chronicle ('the Chronicle'), another national newspaper, prohibiting the publication of any information about Harold's son's education. The editors of the Mercury and the Chronicle are friends. The editor of the Chronicle emailed details of the story about Harold and his son and the photograph to the editor of the Mercury.

- (b) Explain whether the Mercury could incur any liability for contempt of court in relation to its actions.

**(5 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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