



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. Discuss with reference to the relationship between the judiciary and the other branches of the government in the UK the extent to which the separation of powers is necessary to secure the rule of law.

(25 marks)

2. (a) Explain how the UK Parliament has devolved power to Scotland.

(9 marks)

- (b) Analyse the extent to which devolution of powers to Scotland has affected parliamentary sovereignty.

(16 marks)

(Total: 25 marks)

3. Discuss the extent to which the law on defamation hinders the freedom of the press.

(25 marks)

4. Evaluate with reference to the principle of proportionality the extent to which Articles 10 and 11 of the European Convention on Human Rights affect the conduct of the police to control protestors.

(25 marks)

Turn over

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

Question 1

Late one evening, a fight broke out in the King's Arms, a pub in Bristol. Harvey was stabbed with a knife and the police were called. PC Ross found Mike Pearson two streets away from the King's Arms. He was walking unsteadily and had blood on his shirt. PC Ross approached Mike and stopped him and searched his pockets. However, he did not find anything.

PC Ross asked Mike for his name. Mike slurred, 'Michael Mouse'. PC Ross then told Mike that he was under arrest. Mike asked, 'What for?' and PC Ross replied, 'If you don't know, you must be stupid as well as ugly'.

PC Ross took Mike to the local police station, where he was brought before the custody officer, Sergeant Hardman. Sergeant Hardman told Mike that he was under arrest for assault with intent to cause grievous bodily harm. He also authorised Mike's detention on the basis that this was reasonably necessary to obtain evidence of the offence for which Mike was under arrest by questioning him.

Mike asked to see a solicitor, but Sergeant Hardman told him that Superintendent Bennett had given written authorisation delaying Mike's right to see a solicitor for 36 hours, to protect Harvey from being attacked again. Superintendent Bennett then interviewed Mike, who confessed to stabbing Harvey.

Meanwhile, PC Cahill went to Mike's house and searched it, as she had been told by Harvey that the fight between him and Mike had arisen because Harvey had accused Mike of stealing a valuable watch. While looking for the watch, PC Cahill discovered some cocaine, which she then brought back to the police station.

Mike was then charged with assault with intent to cause grievous bodily harm and with the possession of a controlled drug.

Assume that nothing further of legal significance occurred.

Advise Mike whether the action taken by the police was lawful.

(25 marks)

Question 2

As a result of concern about energy security in the UK, Parliament enacted the (fictitious) Energy Protection Act 2017 ('the EPA'). Section 2(2) of the Act makes it a criminal offence to 'stage a demonstration in a public place within a radius of five miles of a designated facility'. The EPA gives the Secretary of State for Business, Energy and Industrial Strategy the power to designate facilities for the purposes of s.2(2). Conviction of an offence under s.2(2) carries a penalty of up to two years' imprisonment and/or an unlimited fine.

The Secretary of State has designated a liquefied petroleum gas ('LPG') storage facility near Lincoln as a designated facility. People for a Green World ('PGW'), an environmental pressure group, staged a small demonstration on a children's farm two miles from the LPG facility. The owners of the children's farm had granted PGW permission to stage the demonstration, as they thought the LPG facility posed an environmental threat to visitors to the farm.

Minal, the organiser of the demonstration, was subsequently arrested by the police and threatened with prosecution for an offence under s.2(2) of the EPA. She is shocked, as she considers that such a prosecution would infringe her right to freedom of assembly.

- (a) Advise Minal whether she has any grounds for arguing that her prosecution constitutes an unjustified interference with her rights under Article 11 of the European Convention on Human Rights.

(14 marks)

Assume for this part of the question **only** that Minal 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 how the Court of Appeal (Criminal Division) could use the Human Rights Act 1998 to protect any right of freedom of assembly that Minal might have, and if so how it would do so.

(11 marks)

(Total: 25 marks)

Turn over

Question 3

Following public concern that dry cleaners were using hazardous chemicals, Parliament enacted the (fictitious) Dry Cleaners (Licensing) Act 2010 ('the Act'). Any business wanting to operate a dry cleaners must obtain a licence, renewable every five years, from the local authority responsible for the area where the dry cleaners is to be located. The Act provides that local authorities should grant licences to businesses that can demonstrate that they will not be using hazardous chemicals.

Section 17 of the Act also provides that any decision of a local authority relating to the grant or refusal of a licence 'shall not be questioned in any legal proceedings whatsoever'.

Kirkwood District Council ('KDC') announced guidelines that it would normally grant a licence to a business wanting to open a new dry cleaners within its area, if the business had operated at least three dry cleaners for five years without having failed an inspection by local environmental health officials. KDC made the following decisions last week.

- (i) It rejected an application for a licence from Grahamstown Cleaners Ltd ('GCL'), because it did not meet its guidelines. GCL had operated two dry cleaners for five years and had never failed an inspection by local trading standards officials. It had also produced a report from environmental health consultants confirming that GCL's proposals for its new dry cleaners comfortably exceeded the standards imposed by environmental health legislation.
- (ii) It rejected an application from Bathurst Garment Care Ltd ('Bathurst') for the renewal of its licence for both of its dry cleaners in the Kirkwood area, although they had passed all their inspections. No reasons were given.
- (iii) It granted a licence to Abstotic Cleaning Ltd ('Abstotic'), although two of its three dry cleaners in a neighbouring district had failed their last two environmental health inspections. The Kirkwood Society, a local amenity group that campaigns on issues affecting the district, asked KDC's chief executive why it had granted Abstotic its licence. The chief executive replied that KDC was following the instructions of the democratically elected MP for Kirkwood. Moreover, granting the licence to Abstotic would boost employment locally.

Advise GCL, Bathurst and the Kirkwood Society whether each may make a claim for judicial review.

(25 marks)

Question 4

A by-election took place recently in the parliamentary constituency of Albany South. Zoe Hunter, the candidate of the Uniting Party, won the by-election, narrowly beating Danny Reynolds, the candidate of the Action Party, by fewer than 100 votes.

The campaign had been very acrimonious, and shortly before polling day, Zoe had published an election address claiming that Danny was a close associate of international criminals and was involved in the importation and distribution of illegal drugs. Although Danny vehemently denied these allegations at the time, he believes that he would have won the by-election, if the allegations had not been made. However, Zoe claims that she made these allegations in good faith, relying on information given to her by an investigative journalist, who had infiltrated a gang of international criminals.

(a) Advise Danny of his rights to challenge the by-election result.

(12 marks)

Danny commenced legal proceedings against Zoe for defamation. Three days before the trial was due to start before a jury, the Daily Mercury, a national newspaper, published an editorial, which included the following:

Danny is a Zero

Danny Reynolds is a bad loser. Not only has he refused to accept his by-election defeat, he has sued the worthy victor, Zoe Hunter, for defamation. Let's hope the jury realises he is a no-hoper and throws out his ridiculous claim.

(b) Consider whether the Daily Mercury may incur criminal liability under the common law or the Contempt of Court Act 1981 as a result of the comments made in its editorial.

(13 marks)

(Total: 25 marks)

End of Examination Paper

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