

## 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 the question paper fully.** However, you may make notes on the 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. The 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 2010-2011 Robert G Lee and Peter Wallington Oxford University Press.**
- Candidates must comply with the ILEX 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 ball point 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 ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

## SECTION A

(Answer at least one question from this section)

1. With reference to the principal constitutional conventions, assess the role they play in the constitution of the United Kingdom and explain their status in law.

**(25 marks)**

2. With reference to the European supranational courts,

- (a) assess the contribution each has made to legal developments in the UK;

**(9 marks)**

- (b) analyse the difficulties which have arisen in their relationship with the UK courts;

**(8 marks)**

- (c) indicate how those difficulties might be overcome.

**(8 marks)**

**(Total: 25 marks)**

3. Analyse the means by which the privacy of the individual is secured at law in the United Kingdom and assess their effectiveness in securing personal liberty.

**(25 marks)**

4. "In the limited sense of law and order, the rule of law may appear to be preserved by a dictatorship or a military occupation as well as by a democratic form of government." (*Bradley and Ewing; Constitutional and Administrative Law 15<sup>th</sup> ed. 2010*)

With reference to this statement,

- (a) explain how the rule of law in a representative democracy such as the United Kingdom may differ from that in a dictatorship;

**(15 marks)**

- (b) analyse how threats to the rule of law in the United Kingdom have been dealt with since 1979.

**(10 marks)**

**(Total: 25 marks)**

## SECTION B

(Answer at least one question from this section)

### Question 1

John is a scrap metal merchant who collects scrap in and around Basset on weekdays. However, at weekends he sells ice cream from a mobile van in the market place of Basset. It is a popular tourist centre. Basset District Council ("the Council") has passed a by-law which requires any street trader within its administrative area to hold a valid trading licence issued by the Council.

In July 2010 the Council opened a leisure centre ("the Centre") in the marketplace which, among other things, sells ice cream from a window facing onto the pavement. John stations his van outside the centre on Saturdays and Sundays. On a Saturday in early August 2010 an official, Simon, who works at the centre approached John and told him to move his van away from the Centre. John refused, using an obscene word to reinforce his views. On the next day, Sunday, he continued selling ice cream outside the Centre as usual. On Tuesday, in the week following, he received a letter from a Council Officer revoking his licence as from midnight on the following Friday. The letter contained no reasons for the decision.

John contested this decision and the Council told him that he could present his case before the Council's Licensing Appeals Committee ("the Committee"). John attended with his solicitor only to be told that he could not be legally represented at the hearing. When John attempted to cross examine Simon, who appeared as a witness, the Chairman of the Committee told John that he was not permitted to examine witnesses and that he could address the Committee personally but only for two minutes. On the day after the hearing, John received a letter from the Council upholding the Council's revocation of his licence. The letter contained no reasons for the decision and stated that the by-law provided that the decision of the Committee was final and that there could be no appeal to a court of law whether on a point of law or on an issue of fact.

The Chairman of the Committee is also a Basset magistrate and member of the court which convicted John of handling stolen metal last year.

Advise John on his legal rights.

**(25 marks)**

*Turn over*

## Question 2

One Saturday evening, Officers at Basset police station received reports that three youths had mugged Ernest, a senior citizen, and robbed him of his wallet (containing about £100) and a number of cans of beer that he had just bought from a corner shop. Ernest has described his assailants as three youths, small in stature wearing dark track suits and white trainers. He said he could not identify them clearly because it was dark, but he thought one of them wore a red baseball cap.

Half an hour after the mugging, PC Peel spotted two youths, Anil and Dipak, drinking from cans of beer outside the corner shop. They were wearing dark track suits and white trainers; neither of them wore a hat. Peel recognised the youths as being part of a gang. Peel's sergeant had previously told him that they were "criminals in the making". Peel ordered Anil and Dipak to turn out their pockets and found that each had about £50 in notes and small change. He said to them "You're nicked" and radioed for a police car to take them to Basset police station where they were locked up in a small room without access to a lavatory for four hours until the custody sergeant returned from another crime scene.

In questioning them at the police station Peel demanded to be told whether any other members of the gang had been with them that evening. Anil said that Ewan had been with them but had gone home. Peel knew Ewan's address and went off to interview him. On approaching the house where Ewan lived, Peel heard uproar within. He put his shoulder to the front door and burst in to find Ewan sitting in an armchair watching a noisy gangster film on television. Ewan got up and tried to push Peel back through the front door, whereupon Peel arrested him and took him to the police station. Ewan asked to make a phone call to his father, who was working in London, but his request was refused.

Peel has justified his forced entry into Ewan's home on the basis of s17 Police and Criminal Evidence Act 1984 (PACE).

At the police station Anil and Dipak explained to the custody sergeant that the money in their possession was the proceeds of their day's work at a hand car wash at a nearby garage where they worked on Saturdays. They also maintained that the beer cans from which they had been drinking were not the brand stolen from Ernest. They were released later that evening without charge.

A local youth worker has told Anil, Dipak and Ewan that they could sue the police.

Advise Anil, Dipak and Ewan on their respective legal rights.

**(25 marks)**

**Question 3**

Peter is chairman of a charitable trust for disabled children ("the Trust"). Each year on the first Saturday in May the trustees and their supporters arrange a sponsored cycle ride of some fifty miles from London to the Market Square ("the Square") in the town of Basset where the Trust's offices are based. Last Saturday, the first one in May, 100 cyclists, led by Peter, assembled in London's Trafalgar Square at midday. PC Lemon approached Peter and asked for evidence of permission to hold a procession. Peter replied that he did not need permission whereupon Lemon arrested him saying "you must be joking". Peter pushed him away and led the ride away from Trafalgar Square.

Once all the cyclists had arrived in Basset, Peter mounted the podium of a statue in the Square and addressed them. He criticised the police for attempting to interfere with the ride and he gave the Nazi salute to PC Bobby who was standing by. He also said that motorists should be banned from the roads because of the danger they posed to cyclists. His comments caused dissent among the crowd and some began to throw tomatoes and rotten eggs at Peter. Fighting then broke out between the cyclists and a section of the crowd. PC Bobby told Peter to end his address but he refused.

PC Bobby then called up reinforcements who surrounded the crowd. PC Bobby, who had been told by radio of Peter's flight from arrest in London, then arrested Peter saying "You're a serial troublemaker". The police kept the crowd confined in the Square for four hours until they were satisfied that tempers had cooled. When the police first set up the cordon, one onlooker, Wilfred, had begged them to be allowed to leave as he had received a telephone message that his wife had gone into labour and had been taken to Basset General Hospital. PC Bobby told him to stay put or she would arrest him; Wilfred remained in the Square for the whole four hours in considerable distress.

Advise on their respective legal rights:

(a) Peter, who wishes to sue the police for wrongful arrest;

**(15 marks)**

(b) Wilfred, who wishes to sue the police for holding him in the Square against his will.

**(10 marks)**

**(Total: 25 marks)**

**Turn over**

**Question 4**

Following an outbreak of swine vesicular disease (SVD) in Yorkshire in December, France has banned all imports of pork from the UK to France. The disease is highly contagious. There have been angry scenes in the House of Commons in response to the French embargo in response to which the Government has passed as emergency legislation the (fictitious) Meat Imports Retaliation (France) Act 2010 ("the Act of 2010") banning the import of pork products from France. The House of Commons has also resolved to impose a flat rate levy of £500 a year on the sale of pork products in order to assist financially the regeneration of the pig industry in the North of England.

George farms near Dover, in Kent, and has a regular export trade in live pigs to France through Dunkirk. There has been no incidence of SVD in Kent or adjoining counties and the UK Government has not introduced a ban on the movement of pigs in the southern counties of England, although it has done so in the North. Accordingly, George has arranged to export his pigs to Denmark. Last week, an animal rights group, who object to the export of live animals for slaughter, blocked the gangway to the boat which was to about to load George's pigs for transit to Denmark. The police were called but Inspector Orange refused to act against the protesters because he feared that to do so might cause a breach of the peace.

Anton imports meat products, including pork, from France. He considers that he is being discriminated against because he has to pay the same levy as supermarkets and because the levy is unlawful. He has refused a demand for the payment of the levy and is being prosecuted by the Ministry of Agriculture Fisheries and Food for non-payment. He is also angry that he is being banned from selling products which pose, he considers, no health risk. He maintains that the Act of 2010 is unlawful.

Advise on their respective legal rights and how they should pursue them:

- (a) George, who is incensed by the action of the French and by what he considers to be the biased attitude of the police;

**(10 marks)**

- (b) Anton, who considers he has been the victim of unlawful legislation and discrimination.

**(15 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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