

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 & Human Rights 2010-11, Robert G Lee and Peter Wallington, Oxford University Press 2010.**
- 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 PRACTICE**

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

1. "It is a cardinal principle of Community law that the laws of Member States should provide effective and adequate redress for violations of Community law by Member States where these result in the infringement of specific individual rights conferred by the law of the Community."

Lord Bingham in *R v Secretary of State for the Home Department, ex parte Gallagher* (1996).

In the light of the above statement, assess the effectiveness of the public law remedies available to the citizen in the United Kingdom for redressing violations of Community law.

(25 marks)

2. (a) Analyse the benefits for the press of the *Reynolds* defence in defamation and assess its limitations;

(20 marks)

(b) Explain how journalists are able lawfully to protect their sources.

(5 marks)

(Total: 25 marks)

3. (a) Analyse the constituent elements of breach of the peace in common law;

(15 marks)

(b) Explain how a recurrence of breach of the peace following a conviction can be dealt with by the courts.

(10 marks)

(Total: 25 marks)

4. Analyse the arguments for and against replacing the Human Rights Act 1998 with a British Bill of Rights.

(25 marks)

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

Question 1

Alem is an Ethiopian national normally resident in the United Kingdom. In 2007 he was captured in the Middle East by military forces of a state, Laputa (a fictitious state), allied to the UK. He was the subject of extraordinary rendition (unlawful capture) in which the UK Security and Intelligence Service ("SIS") was complicit by virtue of the use of a Laputian Air Force base in the UK. He was transferred from the UK to the Laputa Bay detention centre ("Laputa Bay") where he was subjected to a harsh regime of interrogation which included a technique called "waterboarding". He was also subjected to electric shocks and mock execution. SIS was aware of that and one of its agents attended interviews with Alem at Laputa Bay.

At the request of the UK government, Alem was released in 2009 and flown to the UK upon the understanding that he would be held in the UK until required to appear at his trial before a special military court in Laputa and to give evidence in that court against other inmates of Laputa Bay.

Upon his arrival in the UK he was arrested on terrorism charges and made the subject of a control order. He was represented by a special advocate in the control order proceedings but was given no information as to the reasons for his detention or the basis for making the control order. The terms of the order were among other things: that he would reside in a town in the Midlands, 150 miles from his rented accommodation in London; that he would be subject to a daily 18 hour curfew; and that he would be tagged electronically.

Alem alleges that SIS was complicit in his capture, his transfer to Laputa Bay and his subsequent ill treatment there. He has asked the UK Foreign Secretary to release information held by the SIS about his ill-treatment at Laputa Bay to enable him to defend anticipated proceedings against him by the Laputa Government. He says the information was in any case revealed orally in a court in Laputa over a year ago. The Laputian State Department has said that the release of that material would jeopardise intelligence sharing between Laputa and the UK and, accordingly, the UK Foreign Secretary has said he will serve a Public Interest Immunity (PII) certificate to prevent its release in any proceedings instituted by Alem.

Advise Alem:

- (a) whether he is likely to succeed in obtaining the information he seeks from the UK Foreign Secretary and in having the control order lifted;

(15 marks)

- (b) if he is successful on either or both counts in (a) above, whether he is likely to be awarded damages or any other remedy.

(10 marks)

(Total: 25 marks)

Turn over

Question 2

Farah is an Iranian national and a third year student studying physics at the University of Basset. She has been promised a job with the state nuclear authority in Teheran if she obtains a Class 2.1 honours degree or better in her final examinations this summer.

Two months ago Farah made a written complaint to the University Registrar that she had been harassed sexually by her tutor, Mark, while attending a tutorial in his study at the Physics Faculty building. Farah has said that no other person was present when the incident occurred.

A week later the Registrar summoned Farah to a Disciplinary Board. She was told that the Board had been convened because of her complaint against Mark. She was also told that she could be accompanied by a "friend" at the hearing, provided the friend was not legally qualified and that she, but not the friend, could address the Board for two minutes.

The Board comprised the Vice-Chancellor, the Registrar and the Head of the Physics Faculty, who is Mark's uncle. Mark was not present. The Vice-Chancellor chaired the Board and invited Farah to substantiate her claim. She started to repeat what she had said in her written complaint and was stopped after exactly two minutes. The Vice-Chancellor then asked her why she had made a false accusation against Mark. Farah was astonished by this question but stood her ground. The Registrar sneered that it seemed to be a favourite pastime of female foreign students to get University staff into trouble. Mark's uncle told Farah that in his view the Iranian nuclear authority was a threat to world peace. Finally, the Vice-Chancellor told a tearful Farah that she would receive the decision of the Board in due course.

A week later Farah received a letter stating that the Board found unanimously that she had invented her complaint against Mark and that she would have to leave the University without sitting her final examinations. The letter stated that she could appeal to the University Visitor, Lord Basset, but that the University's statutes barred any further appeal to a court of law.

Farah, who has been unwell and unable to attend lectures since the hearing, wrote immediately to Lord Basset to appeal against the Board's decision but his office replied that he was out of the country until the autumn; however, he had delegated his powers as Visitor to his private secretary, Charles.

Advise Farah on her legal rights.

(25 marks)

Question 3

Bill lives in Basset and over the last 20 years has been in and out of prison for burglary. He is well known to officers of the Bassetshire Constabulary and personally known to Police Constable Peel who keeps an eye on him.

Lately, Bill has been frequenting *The Red Lion*, a public house in Basset. This is also frequented by criminals who are more serious offenders than Bill. The police keep a watchful eye on the public house, particularly as it is well known for drug dealing, which lately has increased. Accordingly, Peel has installed secret listening devices and cameras there with the consent of the landlord.

Peel is concerned that Bill may have become involved with dangerous criminals. One morning when Peel knew that Bill was away from Basset he entered Bill's house by using a skeleton key and installed a secret listening device. He also installed a device in Bill's car, parked in the drive of his house. Bill has a girlfriend, Mary, who has a flat in Basset where Bill stays from time to time. Peel has tapped her mobile telephone and intercepted her email.

The listening devices reveal no evidence incriminating Bill nor does the surveillance of Mary, so Peel also decides to use an undercover officer, Detective Constable Bobby, to discover whether Bill is actually involved in drug trafficking. Bobby befriends Bill in *The Red Lion* and they become drinking companions. After a few weeks Bobby asks Bill if he could deliver some packets of powder to a friend. Bill enquires as to the nature of the powder and Bobby admits that they are drugs but offers to pay him £100 to carry out the job. Bill is desperate for money and tells Bobby he will only do it once. The address for delivery is a secret house owned by the police and on his arrival there with the drugs Bill is arrested and charged by two plain clothes policemen with offences under the Misuse of Drugs Act 1971. This made Bill very angry and he assaulted the arresting officers, whereupon they bundled him into a waiting police van where he was roughly handled.

Advise Bill and Mary on their respective legal rights.

(25 marks)

Turn over

Question 4

Enzio is a Premier League footballer who plays for Basset Wanderers. The team finished top of the League last year. He is paid £5 million a year and enjoys a celebrity lifestyle. His girlfriend, Susi, is a top fashion model.

Fred, a newspaper reporter on *The Barchester Chronicle* ("*The Chronicle*"), follows the couple's every move. Earlier in the year, they decided to marry and the wedding and reception was held last month in the grounds of Basset Hall. Celebrities from all walks of life were invited and Enzio and Susi sold the photographic rights for the event to a weekly society magazine called *Cheerio!* for one million pounds sterling. They asked their guests not to bring cameras to the reception. Fred managed to gate-crash the reception clandestinely and photographed the event with a concealed camera. His photographs were published in the *Chronicle* before the wedding edition of *Cheerio!* appeared in newsagents and on news stalls.

Fred then followed the couple on their honeymoon in the Caribbean island of Mustique and published photographs of them sunbathing naked on a private beach.

Two months later the couple's marriage was reportedly in difficulties and Fred photographed Enzio emerging from what Fred believed was a brothel. The caption to the photograph printed in *The Chronicle* read: "Basset Premiership star plays away".

Advise on their respective legal rights

- (a) Enzio and Susi, who wish to sue *The Chronicle* for publishing photographs of their wedding and their honeymoon;

(15 marks)

- (b) Enzio, who wishes to sue the *The Chronicle* for publishing material suggesting he had visited a brothel, which he denies.

(10 marks)

(Total: 25 marks)

End of Examination Paper

© 2011 Institute of Legal Executives

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com