

## 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:** Robert G Lee & Peter Wallington: Blackstone's Statutes on Public Law and Human Rights 2011-2012.
- 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**

**BLANK PAGE**

*StudentBounty.com*

## SECTION A

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

1. Explain the functions of the principal public sector ombudsmen and analyse their effectiveness in providing redress for the citizen.

**(25 marks)**

2. "Abuse of power is a name for any act of a public authority that is not legally justified. It is a useful name, for it catches the moral impetus of the rule of law. It may be, as I ventured to put it in *Begbie*, 'the root concept which governs and conditions our general principles of public law'. But it goes no distance to tell you, case by case, what is lawful and what is not."  
Laws LJ in *Abdi & Nadarajah v Secretary of State for the Home Department*.

- (a) In the light of the above quotation, analyse how the courts categorise claims of abuse of power made against public authorities;

**(15 marks)**

- (b) Assess the adequacy of the remedies available in the Administrative Court for claimants in judicial review.

**(10 marks)**

**(Total: 25 marks)**

3. Analyse the powers available to the police:

- (a) to regulate the organisation of processions and assemblies;

**(15 marks)**

- (b) to deal with processions and assemblies which become disorderly and cause damage to persons and/or property.

**(10 marks)**

**(Total: 25 marks)**

4. Analyse how the UK courts deal with conflicts between EU law (Luxembourg jurisprudence) and ECHR law (Strasbourg jurisprudence), on the one hand and UK statute and common law (domestic jurisprudence), on the other.

**(25 marks)**

**Turn over**

## SECTION B

(Answer at least one question from this section)

### Question 1

Consider each of the two following short scenarios which are unrelated:

- (a) A General Election took place last month. Eric is a member of the (fictitious) Urban Party and has been the Member of Parliament ("the MP") for the (fictitious) constituency of Cornbrash North for the last ten years. In the election Eric was returned as the MP with a majority of 79 votes. Percy, the candidate for the Country Party, was the runner-up.

In the election campaign Eric had seen Percy as his main threat. Eric's published election address was directed, principally, against Percy and, in particular, his personal character and conduct. Eric accused Percy of wooing religious extremists and suggested that his rival had broken his promise to reside in the constituency. He also claimed that his opponent had solicited illegal donations from a foreign donor. A copy of Eric's election address was sent to every house in Eric's constituency.

Percy has petitioned for an election court to declare the election of Eric void for illegal electoral practices.

Advise Eric on his legal rights.

**(13 marks)**

- (b) John is the sitting Member of Parliament ("the MP") for the (fictional) Cornbrash South constituency. He was re-elected at the General Election in October last year. Earlier this month the Independent Parliamentary Standards Authority ("IPSA") published a Report on the expenses claimed by Members of Parliament in 2011. This Report contained a statement of certain expenses which, in the opinion of IPSA, had been claimed incorrectly. The individual MPs had been notified in advance of publication of the findings contained in the Report and, in most cases, the MPs in question had reimbursed the expenses payments which IPSA said had been wrongly claimed.

With regards to John's expenses, the Report said that he had wrongly claimed £15,000 for rent which he maintained he had paid to his daughter (who lived in a flat in Westminster which John owned) and that he had produced counterfeit receipts. At the time in question MPs were permitted to claim expenses for accommodation in London if their principal private residence was more than fifty miles from Parliament Square. John considers that his expenses claim was within the rules in force for the reclaiming of expenses as his main home was in Basset, two hundred miles from Westminster and that he was entitled to accommodation in London in order to attend the House of Commons and perform his duties as an MP. Accordingly, he has not refunded the payment received for his expenses claim. IPSA has reported the case to the Crown Prosecution Service which has commenced proceedings against John for false accounting.

John believes that he has acted correctly and that the matter should be dealt with by the House of Commons and not by the courts.

Advise John on his legal rights.

**(12 marks)**  
**(Total: 25 marks)**

**Turn over**

**Question 2**

Three young women, Emma, Judy and Shaheed, were walking along the Street in the town of Cornbrash. Emma offered Shaheed some sweets. Shaheed took a sweet, unwrapped it and discarded the wrapper on the pavement. A policewoman, PC Wallis, on patrol with PC Peel, was walking towards the three girls. She saw Shaheed drop the wrapper and told her to pick it up. Using some foul and abusive language, Shaheed told PC Wallis to pick it up herself.

At this point PC Wallis seized Shaheed who resisted and pushed PC Wallis away. PC Wallis tripped and broke her arm. PC Peel then pinned Shaheed roughly to the wall and handcuffed her. Emma called PC Peel a "fascist beast" and PC Peel then arrested her and Judy saying "I'm doing you for fighting". He telephoned for support and three policemen arrived in a van into which the three girls were bundled unceremoniously.

A crowd had gathered at the scene and reacted angrily at the treatment of the three young women, shouting abuse at the police, throwing stones at the van, breaking its windows and preventing it from driving off. Police then arrived in large numbers with dogs and surrounded the crowd. The crowd was kept there for four hours until a Police Inspector, Inspector Dixon, took the names of some thirty people including Fred, an elderly person, who had been walking his dog when he was caught up in the fracas. The situation upset him and he suffered a heart attack. Dixon told every person whose name he had taken that he or she was under arrest and would go to prison.

Advise all the persons arrested on their respective legal rights i.e. Emma, Judy, Shaheed, Fred and the other members of the crowd whose names were taken by Dixon.

**(25 marks)**

### Question 3

The (fictitious) Country Party has just won the General Election which took place last month. There is a global financial crisis which has cost the country billions of pounds in supporting sterling and the new Government considers it has to make drastic cuts in expenditure. The new Secretary of State for Defence, Henry, has reported to the Cabinet that he has inherited contracts awarded to a shipbuilding firm called Menowar plc to build two aircraft carriers. These are to be built in shipyards situated in the Parliamentary constituency of Jack, the outgoing Defence Secretary. Work has begun on the first aircraft carrier, *HMS Constitution*. *The Chronicle* newspaper recently published an article on Jack stating that he had just been appointed chairman of Menowar plc drawing fees of £250,000 per annum.

The services chiefs have persuaded Henry that the aircraft carriers are vital to the defence of the United Kingdom. Consequently, he has told the Cabinet that he would like to see the contracts completed for reasons of national security. Moreover, he says he has been advised by his permanent secretary that the penalties for cancelling the contracts are such that it would be uneconomic to do so. For his part, the Prime Minister wants to make savings wherever he can and is determined to extricate the Government from the contracts. He has noted that there was no proper appropriation of funds for the contracts under the previous administration. He has asked the Attorney-General to advise the Cabinet whether the contracts can be treated as unenforceable in whole or in part.

Explain what general advice the Attorney-General should give the Cabinet on the Prime Minister's wish to cancel these contracts and on Jack's conduct.

**(25 marks)**

**Turn over**

**Question 4**

**Advise the following three claimants whether they will succeed in their respective claims in the Administrative Tribunal or the Administrative Appeals Tribunal. Advise the Administrative Tribunal or the Administrative Appeals Tribunal:**

- (a) Thelma is seriously disabled. She owned the house in which she lived and which had been adapted to her disability, though to a low standard. The local Health Authority offered to move her into a new, more suitable facility, called Sunshine House, with the promise that she could live there as long as she chose. She decided to accept the offer, sold her house and moved into Sunshine House in 2005. However, in 2010 the Health Authority decided to close Sunshine House and transfer the patients to local authority care.

Thelma, who is distraught by this development, now wishes to hold the Health Authority to its promise or obtain compensation.

**(9 marks)**

- (b) Sarah is a single mother living in squalid accommodation in multiple occupation. She applied to her local District Council to be rehoused. The Council was advised that it was obliged to rehouse her within 18 months in permanent accommodation under the Housing Act 1996. Accordingly, it promised to provide her with such accommodation.

A little later, the relevant section of the Act came before the Supreme Court in a different case. The Court held that a local authority was under no duty to rehouse an applicant in permanent accommodation in such circumstances. When the Council became aware of the judgment of the Supreme Court, it told Sarah that it would not be providing her with permanent accommodation, as it was not legally obliged to do so.

Sarah claims she is entitled to the accommodation promised to her.

**(8 Marks)**

- (c) Asif was the victim of a miscarriage of justice in that he was wrongly arrested and made the subject of a control order under the anti-terrorism legislation. It was a case of mistaken identity. Asif instructed solicitors and submitted his claim for compensation to a pursuant discretionary, non-statutory scheme, operated by the Home Office, for the payment of compensation to the victims of miscarriages of justice. Asif's solicitors submitted their claim for expenses to the Independent Assessor responsible for dealing with the legal costs associated with compensation claims.

However, one month later the Home Secretary withdrew the non-statutory scheme and, simultaneously, reduced the amount the Independent Assessor could award for the legal costs of making a claim. There remains in force a statutory compensation scheme which is much less generous than that which has been withdrawn, both in respect of the compensation available and the reimbursement of associated legal fees by the Independent Assessor.

Asif and his solicitors maintain that having submitted their claims before the Home Secretary withdrew the non-statutory scheme, they are entitled to the compensation they would have received under that scheme.

**(8 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

© 2012 Institute of Legal Executives