

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, 2011-2012, Robert G Lee and Peter Wallington.**
- 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. "Protection of legitimate expectation is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in the government's dealings with the public"
(De Smith *Judicial Review* 6th ed. 2007 paragraph 12-001).

In the context of the above quotation, analyse the importance of the doctrine of legitimate expectation.

(25 marks)

2. "The King hath no prerogative, but that which the law of the land allows him". Sir Edward Coke in the *Proclamations Case* (1611).

In the light of the above quotation:

- (a) Analyse the extent of the prerogative power as it operates today;

(15 marks)

- (b) Assess the extent to which the prerogative power is justiciable.

(10 marks)

(Total: 25 marks)

3. (a) Analyse the restrictions on the rights enshrined in the European Convention on Human Rights as incorporated into the Human Rights Act 1998.

(15 marks)

- (b) Assess how the courts apply the doctrine of proportionality when judging cases involving such restrictions.

(10 marks)

(Total: 25 marks)

4. Assess the extent to which the constitution of the United Kingdom can properly be described as "federal".

(25 marks)

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

Question 1

The (fictitious) Residential Homes Act 2011 ("the Act") provides that all operators of residential homes for the elderly must be licensed by District Councils. Under the Act, District Councils also have the power to close homes which they consider to be unsatisfactory. Operators refused a licence may appeal to a council's Residential Homes Appeals Board ("the Board"). The Act provides that councils must give 24 hours' notice before visiting a home to make an inspection.

Daisy owns and operates the Evening Residential Home for the Elderly ("the Home") in the town of Cornbrash and has applied to Cornbrash District Council ("the Council") for a licence. Upon receipt of Daisy's application, the Council's Residential Homes Officer, Rose, visited the Home, posing as the niece of an elderly relative seeking accommodation there. Rose was shown over all parts of the home.

On returning to the Council offices, Rose compiled a report which recommended refusal of the licence on the basis that the kitchens were unhygienic, the bathrooms filthy and the corridors unswept. She also noted that few of the staff had qualifications appropriate to the care of the elderly. Accordingly, the Council refused Daisy a licence on the grounds that the Home was dirty and the staff unqualified. Rose's aunt, May, runs a home for the elderly fifteen miles from Cornbrash.

Daisy then wrote to the Council requesting a copy of Rose's report. The Director of Social Services replied that the report was confidential and could not be released to her, but said that she could address the Social Services Committee ("the Committee"). When Daisy attended the Committee she was accompanied by her friend, Viola, who has a degree in social administration. Viola was told that she would have to wait outside. Daisy was allowed five minutes to put her case. To refute her arguments the Committee Chairman read out details from Rose's report and when Daisy asked whether she could consult Viola she was told she could not.

Daisy then told the Committee members that any number of her residents would testify that she ran a good establishment and invited the members to visit the Home to see for themselves. The Chairman remarked that the aged residents would all "be away with the fairies" and closed the meeting.

Daisy appealed to the Board. The Board's decision upheld the decision of the Committee. The decision letter stated that in accordance with the relevant Council byelaw, the Board's decision was "final". Daisy has since found out that the Chairman is engaged to marry Rose's aunt, May.

Advise Daisy on any legal action that may be available to her.

(25 marks)

Turn over

Question 2

Peter is a reporter with *The Daily Register* ("The Register"), a newspaper. The *Register* regularly carries sensational articles on royalty and other celebrities. Peter's friend, John, is a freelance private investigator.

Fay is a famous film star, married to a well known film producer, Corin. Peter suspects she is conducting a secret liaison with the Ruritanian ambassador, Kaspar. Peter asks John to find out all he knows on Fay. John asks Peter "How far should I go". Peter replies: "The whole way". John nods and says he will get back to him in a week.

A week later John gives Peter a report on his investigation on the basis of which Peter runs a story in *The Register* disclosing Fay's liaison with Kaspar in intimate detail. When Fay reads the story she immediately complains to the police, as the story is based on material which she believes could only have come from her mobile telephone conversations with Kaspar.

Louise, Fay's best friend, also had a relationship with Kaspar which she fears *The Register* may expose. She believes her mobile phone has been "hacked" and wants to prevent *The Register* publishing anything about her private life, but particularly her relationship with Kaspar. She also wants to ensure her husband, Rupert, a theatre impresario, does not learn of her transgression.

Meanwhile, a number of Fay's other celebrity friends conclude that their telephones have been "hacked". Alex is the Chairman of the (fictitious) House of Commons Media Committee. Some of Fay's friends are friendly with Alex's wife who urges him to "do something" about *The Register's* activities. Alex persuades the Media Committee to investigate the conduct of the *Register* and invites Peter and the Editor of the *Register* to attend a Committee hearing. They refuse.

Advise:

- (a) Fay, whether she has any legal rights against *The Register*; **(9 marks)**
- (b) Louise, what legal action she can take to prevent her private life being exposed by *The Register*; **(8 marks)**
- (c) Alex, whether Peter and his Editor can be compelled to attend the Media Committee. **(8 marks)**
- (Total 25 marks)**

Question 3

In April 2009 the European Union ("the EU") issued a Directive, the (fictitious) Insurance Services Directive 2009 ("the Directive"). The Directive provides that insurance companies must maintain reserves equal to 25% of the risk they have assumed in issuing insurance policies. The Directive provides that compensation up to a ceiling of £100,000 is payable to any one policyholder of an insurance company which defaults on its obligations. Parliament has passed the (fictitious) Insurance Services Regulation Act 2010 ("the Act") which provides that insurance companies must maintain reserves of only 10% to cover their liabilities. The Act establishes a (fictitious) Insurance Regulation Compensation Scheme ("the Scheme") operated by the regulator, the (fictitious) Insurance Regulation Board ("the Board"), but there is a limit of £50,000 per policyholder on the compensation available under the Scheme.

As yet the UK Government has not implemented the Directive. The Chancellor of the Exchequer said in a speech last year that the UK insurance industry is more sophisticated than its counterparts elsewhere in Europe and that the 25% requirement contained in the Directive is excessive.

Two weeks ago Mary had a fire at her house which caused damage amounting to £100,000. Her buildings insurance is underwritten by an insurer called Brix Insurance plc ("Brix") which went into administration on the day before the fire through its inability to meet its obligations to its policyholders. Mary is distraught.

Advise Mary on any legal action that may be available to her.

(25 marks)

Turn over

Question 4

One week ago, an armed police unit of the Wessex police was summoned to an incident in the Market Square of the town of Cornbrash. A man was installed in a newsagent's shop and the police were told that he had a gun. A bystander identified him as Ben, a local man who had a history of mental illness. The police were surrounding the shop when Ben appeared to point the gun at a police officer who reacted immediately, shooting Ben fatally.

On arriving at the shop, it was clear to the police that the gun was a toy gun. A crowd gathered and angrily demanded that a senior police officer be summoned to provide an explanation. When no officer was forthcoming a group of youths started smashing the windows of the shops in Market Square. Others started looting items from the shops and a car was set on fire. A number of shoppers fled for safety and some were attacked by the youths and were robbed of their watches and personal jewellery.

Police reinforcements started to arrive on the scene, some equipped with riot gear, and surrounded the crowd standing near the shop. Soon the police were under attack with bottles and cobble stones but managed eventually to chase and arrest the rioters and looters.

One rioter called Jack was about to throw a petrol bomb, when he was tackled by PC Evans, handcuffed and arrested. PC Smith chased a rioter called Anil to a house into which he disappeared. PC Smith battered on the door and the occupants, George and Harriet, opened it. PC Smith asked them if they had seen a youth corresponding to Anil's description and they said they had seen no one. PC Smith pushed past them, found Anil cowering behind a sofa and arrested him. He also arrested George and Harriet for obstructing the police. PC Williams caught another rioter called David swinging from the town's War Memorial with a wreath of poppies around his neck. PC Williams pulled him down. David hit his head on the cobbled square and bled profusely as he was led away under arrest. David's girlfriend, Kate, addressed PC Williams with a stream of obscenities whereupon PC Williams arrested her as well.

The police held the crowd in Market Square for over seven hours until the rioters had been arrested or dispersed and a number of those detained have since complained that they were detained unlawfully.

Meanwhile the police had arrested 30 rioters. All those arrested argued that the police had acted unlawfully in shooting Ben, that the police used unreasonable force, that they were provoked by the way the police behaved and that they were arrested unlawfully, as they were simply expressing their view about the shooting and the behaviour of the police.

Advise the Chief Constable:

- (a) on how all those arrested should be charged **(13 marks)**
- (b) how he should respond to the accusations of unlawful shooting, arrest and imprisonment. **(12 marks)**

(Total: 25 marks)

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