



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 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 2012-13, 22nd. edition, Robert G Lee and Peter Wallington, Oxford University Press 2012.**
- 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 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 CILEX 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. (a) Categorise the various types of subordinate legislation;
(5 marks)
- (b) Explain the advantages and disadvantages of subordinate legislation;
(12 marks)
- (c) Analyse the ways in which the Executive can alter the provisions of primary legislation.
(8 marks)
- (Total: 25 marks)**

2. (a) Explain the way in which the legislation of the European Union takes effect in the law of the United Kingdom;
(15 marks)
- (b) Analyse how conflicts between United Kingdom and European Union law are dealt with in the courts of the United Kingdom.
(10 marks)
- (Total: 25 marks)**

3. Assess the extent to which the law protects the privacy of the citizen in the United Kingdom.
(25 marks)

4. Analyse the role of the doctrine of proportionality in proceedings for judicial review.
(25 marks)

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

Question 1

St Luke's is a fine mediaeval cathedral ("the Cathedral") situated in the town of Cornbrash. It attracts many tourists each year, particularly on account of its fine stained glass windows. The administrative head of the Cathedral is the Dean.

There is a square in front of the Cathedral. Part of it consists of the steps of the Cathedral and an apron in front of the steps which is owned by the diocese ("the Church Land").

The rest of the square is owned by Cornbrash District Council ("the Council"). Part of the Council's land ("the Council Land") is cobbled and adopted as highway. The remainder is public open space laid out as a park.

Two months ago, a crowd of about one hundred people arrived in the square displaying banners protesting about the role of the banks and other financial institutions in a capitalist society. In the evening the protesters set up tents in all parts of the square. The tents remain in position and it is difficult for pedestrians to walk through the encampment. The leader of the protesters is Kevin.

Ethel is a worshipper at St Luke's and claims that she cannot attend church services because the protesters intimidate her, jostling her and calling her names. George regularly crosses the square on his way to work but now finds it difficult to get through. Both have complained to the police.

The encampment has generated a considerable amount of debris and some human waste as there are no public lavatories nearby. Nearby residents have complained of the noise and smell.

The Dean has asked the police not to remove the protesters from the square and not to arrest them as he sympathises with their protest. He has closed the Cathedral to tourists on health and safety grounds, though not to worshippers. Traders in the town are losing considerable tourist revenue as a consequence. They want the Chief Constable to clear the square.

The Council considers that the encampment is a nuisance and an obstruction. It has asked the protesters to leave but they have refused. The Chief Constable is worried that if he takes action to clear the square violence might ensue.

Advise the Chief Constable and the Council respectively what legal action, if any, is open to them to remove the encampment from the square.

(25 marks)

Turn over

Question 2

Candidates attempting this question should attempt each following two short scenarios which are unrelated.

- (a) Meg is a Romany gypsy and a single parent with five children, all of school age. Five years ago she bought one hectare of agricultural land ("the Site") near the town of Cornbrash. In the following year she occupied it with her caravan.

Cornbrash District Council ("the Council") served Meg with an enforcement notice requiring her to leave the Site within 30 days and to restore it to its original condition. Meg then applied for planning permission to station a residential caravan on the Site which the Council has refused.

In response, Meg applied for planning permission for a house on the Site which the Council also refused. The Council argued that there were sufficient official sites for travellers within its administrative area, but Meg has said that those sites were unfit for human habitation as they were situated on former rubbish tips or old sewage beds.

The Council then commenced injunction proceedings against Meg who thereupon applied to be rehoused as homeless. She has remained on the Site arguing that the accommodation the Council offered her was unsatisfactory and that her children have been denied the opportunity of a proper education. The Council has offered to admit Meg's children to any school within its control. The family is threatened with forcible removal and Meg faces the possibility of imprisonment for contempt of court.

Meg wishes to take her case to the European Court of Human Rights ("the Court") on the grounds that her human rights have been infringed.

Advise Meg how the Court is likely to determine her application.

(13 marks)

- (b) Edna, a resident of Cornbrash, witnessed some anti-social behaviour in a park owned by the Cornbrash District Council ("the Council"). She reported the incident to the Council's anti-social behaviour coordinator ("the ASBO Officer"). Edna was dissatisfied with the way the ASBO Officer responded to her report and subsequently complained to the Council. In her letter of complaint, referring to the perpetrator of the incident, she wrote "I am certain I would have physically attacked her if she had been anywhere near me." She repeated a similar sentiment, also as a figure of speech in the past tense, to the Council's Head of Public Protection ("the HPP") who was investigating her complaint.

The Council then placed Edna on its Violent Persons' Register for 18 months with a risk rating of "medium". The Register was not only circulated within the Council electronically to Council employees working in departments that were "customer facing", but also to four external partner organisations, which included 50 businesses in the town. The HPP also published an email stating that Edna had made repeated violent threats to numerous employees of the Council.

Edna claims that the Council has defamed her and violated her human rights.

Advise Edna on any legal action which may be available to her to challenge the Council's treatment of her.

(12 marks)

(Total: 25 marks)

Question 3

Angus, Seamus and Bryn, are a criminal gang known to the police. Last year they decided to rob the Cornbrash Provident Bank. At the last minute Angus, who was on parole, pulled out of the scheme. The actual robbery was carried out successfully by Seamus, who stole £50,000 at gunpoint. Bryn drove the getaway car and they buried most of the cash in a nearby wood.

Angus was travelling to Scotland, soon after the robbery took place, when police stopped him randomly at a road block. They handcuffed him, cautioned him, questioned him and removed his luggage from his car boot to the police car. They said they were retaining the luggage for forensic examination and that he could reclaim it at the police station the next day. When Angus arrived to claim the luggage the police told him they had decided to retain it in connection with a bank robbery and because of his known association with Seamus and Bryn.

The police eventually located Seamus who had been celebrating in a public house in the nearby village of Netherfield. PC Dixon arrested him and said: "Drink up. You'll be teetotal where you're going!" Under questioning Seamus admitted he had been in Bryn's company recently. He also admitted he had been in the area of the Bank at the material time but that he could remember nothing else as he had been under the influence of drugs. He made a number of other statements which tended to incriminate him.

The Station Sergeant noted that Seamus was rather incoherent. He was not given access to legal advice before being questioned as the Sergeant thought he wouldn't understand the offer.

The police called with a search warrant at the house where Bryn lodged with Daisy. They found only £1,000 in cash in a cupboard which they seized. PC Dixon arrested Bryn and said "Come along quietly and tell us where the rest is". At the police station Bryn was offered legal advice but he refused their offer. He was placed in solitary confinement and given only bread and water for eight hours. He was then questioned for five hours without a break until he revealed where he had hidden the cash.

Daisy has complained that the schedule to PC Dixon's warrant failed to give particulars of her house and maintains that he entered it unlawfully.

Advise on their respective legal rights, Angus, Seamus, Bryn and Daisy all of whom claim that the police have treated them unlawfully.

(25 marks)

Turn over

Question 4

On the back of a global financial crisis, the Rural Party took office last November as the majority party in government in a coalition with the Suburban Party. The previous Government, the Urban Party, had let a contract to a company called Sanitas Computer Services ("SCS") to develop a unified electronic system for holding centrally the medical records of all Popular Health Service ("PHS") patients so that they could be accessed at any PHS computer station.

SCS initiated a number of pilot studies which involved selected medical practices. These pilot studies revealed some fundamental defects in the design of the project. To date the project has cost two billion pounds sterling and is 25% over budget. A further £250 million will be needed to complete it.

A confidential ministerial report ('the report') has outlined a different scheme whereby all medical practices would be subsidised to convert to standard software. The preferred contractor for that scheme was Medical Systems Ltd ("MSL"), a substantial contributor to Rural Party funds. Frank, a middle-ranking civil servant in the Ministry of Health, has told SCS of the existence of the report.

Last week the Cabinet decided to terminate the SCS project for two reasons: first, in the current dire economic climate the Government could not support further expenditure on the project; and, secondly, that there was no budgetary provision for further development costs. SCS was informed of the decision and has replied that it requires payment of £750,000 in outstanding fees and that it will sue the Government for breach of contract. It has also requested a copy of the confidential report and the relevant Cabinet minute. The Government has said it will seek a Public Interest Immunity Certificate in the event that SCS commences legal proceedings.

The Rural Party's coalition partners are also annoyed about the Cabinet's decision and with Opposition support carried a resolution in the House of Commons to approve completion of the SCS project and to provide the necessary funds.

George is a patient of the Cornbrash Medical Practice which participated in one of SCS's pilot studies. He finds that his medical records were copied to SCS without his permission.

Advise:

- (a) SCS what legal remedies may be available to it to challenge the Government's cancellation of the contract and its application for a PII certificate;

(15 marks)

- (b) The Minister of Health whether he has any legal remedy against Frank;

(5 marks)

- (c) George what legal remedy he may have against the Cornbrash Medical Practice and/or SCS.

(5 marks)

(Total: 25 marks)

End of Examination Paper

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