



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.**
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- 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. (a) Analyse the procedures the police must follow before they may lawfully take a citizen into custody.

(20 marks)

- (b) Explain the circumstances in which a citizen may lawfully resist arrest.

(5 marks)

(Total: 25 marks)

2. Assess the importance or otherwise of the doctrine of separation of powers in relation to the constitution of the United Kingdom.

(25 marks)

3. Explain the function of Public Interest Immunity (PII) certificates and analyse how they take effect.

(25 marks)

4. (a) Explain the steps taken to reform the House of Lords since 1997 and evaluate the principal proposals for further reform advanced since that date.

(15 marks)

- (b) Analyse the possible constitutional effect of altering the composition of the House of Lords so that it is wholly or substantially elected.

(10 marks)

(Total: 25 marks)

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

Question 1

Bob is a scrap metal merchant who, on weekdays, collects scrap in and around the town of Cornbrash. At weekends he sells ice cream from a mobile van in the mediaeval market square in Cornbrash, which is a popular tourist attraction. This provides him with valuable income in the summer months. Earlier this year Cornbrash District Council ("the Council") passed a by-law which requires any street trader, within its administrative area, to hold a valid street trading licence issued by the Council. Bob holds such a licence. The by-law contains a right of appeal to the Council's Licensing Committee ("the Committee") but also states that the decisions of the Committee are "final".

Recently, the Council opened a leisure centre ("the Centre") on one side the market square. It sells ice cream from a hatch facing onto the pavement next to the designated parking bay where for some years Bob has stationed his mobile van on Saturdays and Sundays.

On a recent Saturday Simon, who is a Council employee and works at the Centre, accosted Bob and told him to move his van away from the Centre. Bob swore at Simon and refused to move. On the following Tuesday he received a letter from the Council revoking his licence as from midnight on the following Friday. The only reason given for the decision was that he had used foul language to Simon.

Bob wrote to the Council by return contesting the decision and the Council replied stating that he could present his case to the Committee. Bob traded as usual the following weekend.

A week later Bob appeared before the Committee with his solicitor but the Committee Chairman told him that legal representation was not permitted. He was also told that he could address the Committee for two minutes. Simon appeared as a witness for the Council but Bob was not allowed to cross-examine him.

On the day after the hearing Bob received a letter from the Council upholding the revocation of his licence. The letter contained no reasons for the decision, apart from referring to use of foul language to Simon. A summons to appear before Cornbrash Magistrates for trading without a licence was served on Bob the same day.

The Chairman of the Committee is a Cornbrash magistrate and was a member of the court which convicted Bob of handling metal stolen from the Chairman's business premises last year.

Advise Bob on any legal action which may be available to him to have his licence restored.

(25 marks)

Turn over

Question 2

Note: Candidates should attempt both parts of this question; the two mini scenarios are unrelated.

- (a) Ian is a foreign affairs expert. He wishes to read a (fictitious) internal report created by a journalist at the British Broadcasting Corporation ("the BBC") regarding its coverage, including impartiality, of the political situation in the Middle East. Ian made an application to the BBC to release the report under the Freedom of Information Act 2000 ("the FIA 2000"). The FIA 2000 provides specifically in Section 7(1) and Part VI of Schedule I that the BBC as a public authority is under a duty to communicate information on request only if the information is "held for purposes other than those of journalism, art or literature".

The BBC has refused to release the report on the grounds that:

- (i) It was subject to a legal duty to disclose information only to the extent that it was a "public authority";
- (ii) The FIA 2000 provides that the BBC is a "public authority" only "in respect of information held for purposes other than those of journalism, art or literature";
- (iii) The report was held for the purposes of journalism and consequently there was no duty to release the report.

Ian then applied to the Information Commissioner, appointed under the FIA 2000, to direct the BBC to release the report. The Commissioner refused on the ground that the BBC could not be treated as a "public authority" for the purposes of Ian's request. On appeal by Ian to the Information Tribunal, the Tribunal endorsed the view of the Commissioner.

Ian wishes to apply for judicial review. Advise him on his chances of success if leave is granted.

15 marks

- (b) The Chief Constable of the Cornbrash Police, who is investigating complaints of phone hacking, has applied to the Central Criminal Court for an order requiring a commercial broadcaster, CStarC, to produce within 14 days copies of various emails which had passed between one of its journalists and two other named persons, respectively AB and CD. The judge acceded to the request for a production order in those terms under section 9 and Schedule 1 of the Police and Criminal Evidence Act 1984.

The information provided to the judge included secret information to which CStarC has had no access. The Official Secrets Acts make it an offence for Crown servants to disclose information which might cause damage to the security or intelligence services. Accordingly, the judge first heard evidence on oath *inter partes* and then *ex parte* from the Chief Constable. Secret evidence was included in the latter's skeleton argument which he sent to the judge in advance of the hearing and which the judge read. The judge was not asked to consider that document from the perspective of disclosure or public interest immunity.

CStarC now wishes to have the order quashed. Advise CStarC whether there is any legal basis for so doing.

(10 marks)

(Total: 25 marks)

Question 3

Five years ago the Government published its (fictitious) National Programme ("the NEP") involving the construction of a new generation of nuclear power stations. One of these, called Capax C, was located on a site ("the Site") near the town of Cornbrash.

The Cornbrash district is a former coal mining area and local people maintain that the new power station should be powered by coal and the mines reopened. Members of the Cornbrash Coal Action Group ("the Action Group") have created a protest encampment outside the perimeter of the Site.

Cornbrash District Council has responded by making a by-law whereby it is an offence "within 10 metres of the Site to camp on the land, act in an annoying manner or attach anything to or place anything over any wall, fence or structure forming part of the Site". The Prime Minister was to inaugurate the installation last Saturday morning. On his arrival, Action Group protesters started marching around the Site shouting abuse at the construction workers.

A group based in London, the Anti-Nuclear Society ("the ANS"), is opposed to any nuclear power and in the past has been involved in violent clashes with the police. It planned a demonstration at the Site to coincide with the Prime Minister's visit. Last Saturday 100 ANS members set off in two coaches. The police managed to intercept one of the coaches and instructed the driver to turn back to London, which it did.

The second coach arrived at the Site and police, who were awaiting its arrival, encircled the ANS members as they alighted, searched them and held them in a lay-by for over an hour. Some ANS members broke away from the police and attempted to scale the perimeter fencing. The tents of the Action Group were damaged in the process and fighting broke out between Action Group members and ANS members.

The police arrested those members of the ANS who broke away from their group and also arrested members of the Action Group, whose tents they removed.

Advise on their respective legal rights:

- (a) The Action Group, which claims that the removal of their tents was unlawful and that they were provoked by the actions of the police and the ANS; and
- (b) The ANS, which claims that the police acted unlawfully in re-routing one of their coaches; in arresting its members as they alighted from the second coach; and in confining them in a lay-by. They further allege that the unlawful acts of the police provoked the subsequent disorder.

(25 marks)

Turn over

Question 4

Note: Candidates should attempt all three parts of this question: the facts of each mini scenario are unrelated

- (a) Marek is a Polish national studying at Cornbrash University. For two years he worked part-time as a barman to support his studies. He is now in his third year and has stopped work to concentrate on his final examinations.

In 2011 the European Union issued the (fictitious) Students' Maintenance Directive ("the Directive") which provides that students studying in an EU Member State ("MS") other than their own shall be entitled to all the benefits available to a student who is a national of the host MS. The prescribed timescale for implementation of the Directive is three years. Parliament has now passed the (Fictitious) Education Support Act 2012 ("the ESA 2012") which provides that students who are UK citizens shall be entitled to a Minimum Subsistence Allowance ("the MSA") if they lack the resources to support themselves. Marek has applied for MSA but the Department of Education has told him that as a Polish national he has no entitlement.

- (b) Raisa is a national of the Russian Federation in her final year as a student nurse at Cornbrash General Hospital. She is seeking employment to commence when she qualifies next month. The (fictitious) Jobseekers Act 2012 ("the JSA 2012") provides that jobseekers allowance ("JSA") is available only to EU citizens habitually resident in the UK. The Department of Work has told her that as she is not an EU citizen and habitually resident in the UK she is not entitled to JSA.

- (c) Joan, who lives in Manchester, is a student at the (fictitious) University of Rockall in Scotland. She is about to begin the final year of her course. Last year the Scottish Parliament passed the (fictitious) University Fees ASP 2012 ("the UFASP 2012") which provides that as from September 2013 students at Scottish Universities, whose normal place of residence in the UK is outside Scotland, will have to pay full tuition fees, even if they are part way through their course. Students normally resident in Scotland or in other Member States of the European Union will be exempt.

Advise on their respective legal rights:

- (a) Marek, who claims he is entitled to MSA under the Directive;

9 marks

- (b) Raisa, who claims she is entitled to JSA and that her human rights have been infringed;

8 marks

- (c) Joan, who has failed in her previous attempts to challenge the UFASP 2012, claims that she is the victim of discrimination and now seeks to appeal to the Supreme Court.

8 marks

(Total: 25 marks)

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