



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 2013-2014, 23rd edition, Robert G. Lee, Oxford University Press, 2013.**
- 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. Explain the constitutional status of the executive, the Cabinet and the office of the Prime Minister.

(25 marks)

2. (a) Analyse the substance of the various criticisms which have been expressed about the working of the Human Rights Act 1998 and about the effect of Strasbourg jurisprudence on UK law.

(13 marks)

- (b) Assess whether such criticisms could be overcome by the enactment of a new UK Bill of Rights.

(12 marks)

(Total: 25 marks)

3. (a) What is meant by the expression: 'the right to a fair trial'?

(10 marks)

- (b) In what circumstances can open justice be qualified?

(15 marks)

(Total: 25 marks)

4. Explain the protection available to a civil servant who wishes to expose a concern about Government policy and assess any proposals which have been made for enhancing such protection.

(25 marks)

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

Question 1

John was arrested on suspicion of perpetrating a common assault upon his ex-girlfriend, Mary. He denied the offence on the basis that the complaint had been fabricated by Mary and her family by way of revenge for his poor conduct. However, he was taken to Cornbrash police station and fingerprinted. He was also photographed and provided a DNA sample by way of an oral swab. He was held overnight at the police station but released the following day on police bail without charge. Some days before the bail return date the police informed him that no further action would be taken against him.

Until this incident occurred, John had never been in trouble with the police. His solicitor requested the Cornbrash Police to destroy his fingerprints, photographs, DNA sample and DNA profile. They have refused to do so, giving as their reason that there were no 'exceptional circumstances' to justify destruction having regard to guidelines ('the Guidelines') produced by the Association of Chief Police Officers (ACPO). These Guidelines state that data should be held by the police indefinitely except in 'exceptional circumstances'.

Advise John, who wishes to sue the Chief Constable, whether he has any legal right to have his various records destroyed.

(25 marks)

Turn over

Question 2

Last month, a summit meeting of the G8 (the Group of Eight heads of state or government of the largest eight world economies), met at North Lodge, a country hotel in Cornbrash.

An organisation called the Destroy Capitalism Alliance ('the DCA') planned to disrupt the summit and on the evening before it was due to convene over 100 members of the DCA ('the protesters') camped in the woods around North Lodge. Their leader was Reza, accompanied by his girlfriend, Soraya, both of whom are Iranian nationals studying physics at the University of Cornbrash. Three months ago they had been photographed by police while protesting outside the Foreign Office against the UK's foreign policy towards Iran.

On the first day of the summit meeting, at around 10.00 am, the delegates and their support staff started to arrive at North Lodge. The protesters, wearing black hoods, attacked the cars with flour bombs, eggs and paint.

PC Smith targeted Reza and Soraya and arrested them with the words "gotcha both at last". At the police station Reza was charged with assisting and abetting terrorist activities. Soraya was bundled into a police van but, in attempting to escape through a hatch in the roof of the van, she fell to the ground and fractured her skull. She has suffered permanent brain damage. Some forty other protesters were rounded up and Inspector Edwards arrested them with the words: 'Rent-a-mob hoodies for the chop'.

Two hotel gardeners, Pat and Mike, who were enjoying the incident, tripped up some of the protesters as they ran past. Three protesters stopped and violently assaulted Pat and Mike. Pat fell to the ground. Mike managed to run away but later that day Pat died in hospital of his injuries. The police have been unable to identify their assailants but threatening notes, along with offensive waste material, have since been posted through the letterbox of Mike's cottage.

Advise the following parties on their respective legal rights:

- (a) The DCA who claim that their protest was lawful and that Reza and Soraya were wrongly targeted for racial reasons.

(15 marks)

- (b) The parents of Soraya who claim that, having arrested her, the police failed to protect her from harm.

(5 marks)

- (c) Mike, who claims the police failed to take reasonable steps to assess whether he was a victim of crime and then to accord him reasonably appropriate protection, support, assistance and treatment if he was so assessed.

(5 marks)

(Total: 25 marks)

Question 3

Richard is headmaster of Cornbrash Community School ('the School'), a comprehensive school maintained by Cornbrash Borough Council ('the Council'), which is a unitary authority. Richard is an atheist and has banned all pupils from the School from wearing any religious symbols on the ground that they conflict with the school's uniform policy which he had devised and which the School Governors had approved.

Farah, aged 16, is a Muslim and had been attending school wearing a jilbab, a full-length outer garment worn by Muslim women covering head and hands. She had worn a kameeze, a type of head scarf, until puberty without restriction by the School. Farah's friend Anna, aged 17, is a Christian. She has attended school wearing a gold necklace with a small gold cross.

Last September, Richard had told both girls, first orally and then in writing, that they must comply with the School's uniform policy or leave the school and not return until they had agreed to comply. Both girls refused to conform and, accordingly, Richard excluded them from the School.

John, a mathematics teacher at the School, has been supportive of the two girls, has given them some free lessons at his house and has socialised with them in the town while they have been excluded from the School. Following a complaint from Anna's parents that John may have had sexual relations with Anna, Richard has terminated John's employment on the basis that he has had inappropriate relations with both girls. John claims that he was entirely innocent and that the two girls will support his story. He has appealed to the School Governors.

At the meeting of the Governors' Disciplinary Committee, which considered his case, John was refused legal representation and was allowed to speak in his defence for only five minutes. He was not permitted to cross-examine Richard, who presented the case against John. The Chairman of the Governors, Brenda, is a friend of Anna's parents and chaired the Disciplinary Committee. John has been told that he will not be reinstated but has not been told why his version of events was not accepted. There is no statutory right of appeal and the Governors' decision states that it is 'final'.

Advise Farah, Anna and John on their respective legal rights in Public law.

(Total: 25 marks)

Turn over

Question 4

Candidates should answer both parts of the question, which are unrelated.

- (a) Magnus is detained under the Mental Health Act 1983 at Cornbrash Special Hospital ('the Hospital'). He is not a high-risk mental patient. However, he had been convicted on three counts of manslaughter and is classified as a 'dangerous patient'. The Secretary of State made a statutory direction three months ago to empower special hospitals to record and listen to a random 10 per cent of the telephone calls of patients who are not high-risk, with the exception of their calls to legal advisers. The Hospital has issued a policy setting out a procedure for implementing the direction. Provision was made for a security intelligence system to gather information on patients' escape plans and any other behaviour with security implications.

One year ago the European Union ('EU') issued a directive ('the Directive') providing that the telephone calls of prisoners should be intercepted only in the interests of national security.

Magnus has complained that his telephone calls have been intercepted unlawfully and his human rights violated.

Advise Magnus on any legal remedy that may be available to him.

(12 marks)

- (b) Fred was arrested for drunkenness in 2000 and then convicted for the murder of his cellmate while detained. His case was regarded as controversial at the time because of missing and conflicting evidence. He was released from prison two years ago after a review of his case and started a removal business, which has been successful. He has also mounted a campaign in support of the victims of miscarriages of justice.

He now believes that his business mail, telephone calls and email are being intercepted because of the high-profile nature of his case and the campaign he has waged. He has also made data subject access requests to MI5 and GCHQ, all of which were turned down on grounds of national security.

He complained to the Investigatory Powers Tribunal ('the IPT') that his communications were being intercepted in violation of his human rights, but the IPT ruled that 'no determination had been made in his favour'

Advise Fred, who has exhausted all domestic remedies and now wishes to take his case to the European Court of Human Rights, on the likely outcome should he make an application to the Court.

(13 marks)

(Total: 25 marks)

End of Examination Paper

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com