



CHIEF EXAMINER REPORT

JUNE 2024

LEVEL 6 UNIT 12 – PUBLIC LAW

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

Only limited guidance can be provided due to the small number of candidates sitting the exam.

In terms of areas of improvement, a common error in essays on the separation of powers is candidates not reading the question properly as illustrated by Question 1 in Section A. The separation of powers in the UK involves three sets of relationships: the executive and the legislature; the judiciary and the executive; and the judiciary and the legislature. However, the question specifically asked candidates to evaluate the relationships involving the judiciary, so an evaluation of the executive/legislature relationship was irrelevant. Also, it is necessary to provide specific examples of how separation is achieved between the branches of government. When defining the rule of law, it is also important to include modern definitions such as Lord Bingham's, as well as Dicey's traditional definition.

Another area for improvement is in problem questions, where it is essential to read the facts carefully, as illustrated by Question 4 in Section B. In part (a) the scenario involved both a march and a public assembly, thus engaging sections 12 and 14 of the Public Order Act 1986 respectively. Candidates missed the fact that there was a march so did not apply s 12.

It is also essential to revise sufficient material to be able to answer four questions properly. A candidate who makes no attempt at parts of questions or provides one sentence answers is unlikely to pass, even if they answer one or two other questions satisfactorily.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates. Therefore, no feedback on candidate performance has been included.

Section A

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Separation of powers:<ul style="list-style-type: none">▪ Functions and personnel of the three branches of government should be kept separate▪ Check and balances - separation needed as safeguard against arbitrary government• Definition of the rule of law (Dicey)<ul style="list-style-type: none">▪ An absence of arbitrary power;▪ Equality before the law; and▪ Basic constitutional rights of individuals derived from judicial decisions• Modern definitions of the rule of law; e.g. Lord Bingham's version: emphasis on human rights/international law• Importance of judicial independence in safeguarding the rule of law• Separation between executive and judiciary:<ul style="list-style-type: none">▪ Constitutional Reform Act 2005 (CRA): judicial appointments▪ Other safeguards; e.g. security of tenure/constitutional conventions• Separation between judiciary and legislature:<ul style="list-style-type: none">▪ CRA: removed Law Lords from the House of Lords and created Supreme Court▪ Judicial law-making through case law	

Question 2

25 marks

Attempts too limited to provide feedback.

Suggested Points for Response:

(a) 12 marks

- Dicey's definition of parliamentary sovereignty, including
 - Parliament's unlimited legislative competence
 - No person/body can question an Act of Parliament
- Express/implied repeal
- Definition of implied repeal (Ellen Street Estates v Minister of Health (1934))
 - Qualification of doctrine in relation to 'constitutional statutes' (Thoburn v Sunderland City Council (2002))
 - Definition of constitutional statutes

(b) 13 marks

- Background to the HRA: incorporates key Convention rights into UK law
- Section 2: duty to 'take into account' decisions of the European Court of Human Rights
- Section 3: interpretative obligation on the courts; e.g. Ghaidan v Godin-Mendoza (2004)
- Section 4: declarations of incompatibility; e.g. Bellinger v Bellinger (2003)
- Section 19: duty on government minister to make statement of compatibility or that government nonetheless wishes to proceed
- Evaluation of impact of HRA on parliamentary sovereignty:
 - Does not prevent Parliament enacting incompatible legislation
 - Declaration of incompatibility does not invalidate offending Act

Question 3

25 marks

Attempts too limited to provide feedback.

Suggested Points for Response:

(a) 10 marks

- Situations when powers of arrest arise - s 24(1), (2) and (3) PACE; e.g. power to arrest
 - anyone committing an offence
 - where offence has committed, anyone whom constable has reasonable grounds for suspecting to be guilty of it
- Safeguard: Arrest must be necessary to trigger powers of arrest
 - Reasons set out in s 24(5)
 - Discussion of issues/case law, e.g. Hayes v Chief Constable of Merseyside Police (2011)
- Police must state fact of and grounds of arrest for arrest to be lawful (s 28(2) and (4))
 - Discussion of issues/case law; e.g. Abbassy v MPC (1990) and Taylor v CC of Thames Valley (2004)

(b) 8 marks

- Police's common law power to prevent an actual or reasonably apprehended an imminent breach of the peace (R (Laporte) v CC of Gloucestershire ((2006))
- Definition of breach of the peace (R v Howell (1982)): actions which cause harm to another person or to their property in their presence, or put a person in fear of such harm
- Exceptional circumstances justifying arrest (Bibby v Chief Constable of Essex (2000))
 - sufficiently real and present threat to the peace from the person arrested
 - unreasonable conduct which interferes with the rights of others
 - natural consequence must be 'not wholly unreasonable violence' from a third party

(c) 7 marks

- Power to take fingerprints of a suspect without consent where the suspect is detained for or charged with a recordable offence (s 61)
- Power to obtain other bodily samples but only with the authorisation of a senior officer and with the consent of the suspect (ss 62 and 63)
- Retention of fingerprints and samples (s 64 as amended by Protection of Freedoms Act 2012)
 - Where person convicted of offence, indefinite retention permitted
 - Where person is charged with but not convicted of an offence, retention for three years permitted, subject to possible extension for a further two years
 - Where person arrested but not charged, retention for three years permitted with consent of Biometrics Commissioner, subject to possible extension for further two years

Question 4

25 marks

Attempts too limited to provide feedback.

Suggested Points for Response:

- Background/introduction
 - Legal remedies did not provide adequate redress
 - Parliamentary Commissioner Act 1967 set up post of PCA
 - Appointed by Crown on advice of Prime Minister
 - Reports to Parliament
- Jurisdiction
 - Injustice in consequence of maladministration
 - Definition of maladministration (Crossman Catalogue)
 - Bodies subject to jurisdiction
 - Exclusions from jurisdiction
- Jurisdiction
 - Appropriateness of exclusions
- Procedure
 - MP filter: Complaints must be made via MP; failure to do is an absolute bar (R (Senior-Milne) v Parliamentary and Health Service Ombudsman (2009))
- Critique of MP filter – deterrent to making complaints
 - Time limit: 12 months from date of discovery
 - Extensive powers of investigation; e.g. power to call witnesses/require production of documents
- Enforcement
 - No power for PCA to enforce findings/award compensation
 - Government may reject PCA's findings unless no cogent reasons (R (Bradley) v Work and Pensions Secretary (2008))
 - Public body that rejects PCA's findings must report to Parliament

Section B

Question 1	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Amenability/ Standing/ Timing<ul style="list-style-type: none">▪ The Agency is a public body▪ Public law matter – grants out of public money▪ Standing - in particular INF as a pressure group (<u>ex p. WDM</u> (1995))▪ Timing – in particular ‘out of time’ application by INF (<u>ex p. Jackson</u> (1985))▪ Remedies – see below• SCU<ul style="list-style-type: none">▪ Illegality: Fettering of discretion: over-rigid application of policy; the Agency should be willing to listen to someone with something new to say (<u>British Oxygen v Ministry of Technology</u> (1970));▪ Illegality: Failing to take into account relevant considerations – Biodiversity Research Centre’s support for application (<u>Roberts v Hop wood</u> (1925))• UG<ul style="list-style-type: none">▪ Legitimate expectation - extent to which Agency should be bound by its guidelines (<u>ex p. Coughlan</u> (2000)); whether failure to follow guidelines is an abuse of power (<u>Niazi</u> (2008))▪ Illegality: Ulterior purpose and/or irrelevant consideration - regeneration of deprived area (<u>Congreve v HO</u> (1976)/ (<u>Padfield v Minister of Agriculture</u> (1968))▪ Irrationality: definition of <u>Wednesbury</u> (1948) unreasonableness• INF/Espin<ul style="list-style-type: none">▪ Illegality: jurisdictional error – Agency does not have power to award grants to non-universities for research outside England, Wales and Scotland (<u>Attorney-General v Fulham Corporation</u> (1921))▪ Irrationality (as above)• Remedy: quashing order	

Question 2	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>(a) 10 marks</p> <ul style="list-style-type: none"> • Devolution legislation: Scotland Acts 1998, 2012 and 2016 • Definition of ‘devolved matters’ and ‘reserved matters’ • Scottish Parliament has power to legislate on devolved matters, but this does not affect UK Parliament’s power to make laws for Scotland (s 28(7) Scotland Act 1998) • Scotland Act 2016 – codification of Sewel Convention • Case law (e.g. <u>Miller (No.1)</u> (2017) – Sewel Convention not legally binding • Parliamentary sovereignty: UK Parliament’s ability to enact any legislation it wishes; courts have no power to strike down Acts of the UK Parliament <p>(b) 7 marks</p> <ul style="list-style-type: none"> • Definition of collective Cabinet responsibility as constitutional convention • Discussions leading to collective decisions should remain confidential • Examples/exceptions; e.g. EU referendums/Iain Duncan Smith’s-Robin Cook’s resignations • Application to the facts: no legal sanction but resignation/dismissal probable <p>(c) 8 marks</p> <ul style="list-style-type: none"> • Section 1 Bribery Act: Offences <ul style="list-style-type: none"> ▪ Case 1: offer a financial advantage to another person to induce a person to perform improperly a relevant function/activity ▪ Case 2: offer a financial advantage when person knows acceptance would in itself be improper; Naomi will know it would be improper for police officer to accept bribe. • Section 3 Bribery Act s3: Relevant functions <ul style="list-style-type: none"> ▪ Functions of public nature expected to be performed in good faith, impartially or by person in position of trust’; clearly applies here. 	

Question 3	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Definition of defamation/ libel (publication in permanent form) / slander (publication in transient form) including need to prove damage: application to the facts• Proceedings in Parliament: Article 9 Bill of Rights 1689 – freedom of speech / absolute privilege for sexual harassment allegations• Allegations of bribery: identification of relevant defences in Defamation Act 2013 – replacing common law defences• Truth (s 2) – explanation and application to facts• Honest opinion (s 3) – explanation and application to facts; whether claim that Troy was ‘a cheat who has betrayed the public’ comes within s 3• Publication on matter of public interest (s 4) – explanation and application to facts: <u>Reynolds</u> defence as guide to interpretation of s 4; analysis of factors relevant to bribery claims	

Question 4	25 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>(a) 13 marks</p> <ul style="list-style-type: none"> • The lawfulness of the march <ul style="list-style-type: none"> ▪ Section 11 POA 1986 – Organisers must give police 6 clear days’ notice of public procession ▪ Exception where not reasonably practicable – Secretary of State’s visit was unscheduled • The ban on the march entering the square <ul style="list-style-type: none"> ▪ Section 12 POA 1986 – Senior police officer may give directions imposing conditions if he reasonably believes that public procession will cause serious public disorder/damage/disruption or has intimidatory purpose ▪ Disruption includes noise which may result in persons connected with organisation not being reasonably able, for a prolonged period of time, to carry on their activities ▪ Grounds for reasonable belief – drums generate noise, but unlikely to be for prolonged period ▪ PC Chessun not the most senior police officer present • The Meeting <ul style="list-style-type: none"> ▪ Section 14 POA – powers arise if meeting a ‘public assembly’ (s 16) ▪ Senior police officer may give directions imposing conditions as to maximum duration if he reasonably believes that assembly will cause serious public disorder/damage/disruption or has intimidatory purpose ▪ Grounds for reasonable belief – disruption to children and carers may be sufficiently serious <p>(b) 12 marks</p> <ul style="list-style-type: none"> • Section 1 Contempt of Court Act 1981 – ‘strict liability rule’: Elements of the rule <ul style="list-style-type: none"> ▪ Publication: s.2(1) – clearly satisfied ▪ Substantial risk that the course of justice will be ‘seriously impeded or prejudiced’: s.2(2) – probably satisfied, although trial before magistrates not jury ▪ Proceedings must be active: s.2(3) and (4), Schedule 1 - clearly satisfied • Defences: <ul style="list-style-type: none"> ▪ Innocent publication: s.3 – not applicable on the facts ▪ Contemporary report of legal proceedings: s.4 – not applicable on the facts • Discussion of public affairs: Publication made as part of a discussion in good faith of public affairs does not infringe the strict liability rule if risk of prejudice is merely incidental: s.5 (<u>A-G v English</u> (1983)) – not applicable on the facts 	