

UNIVERSITY OF BOLTON**SCHOOL OF LAW****LAW PATHWAY****SEMESTER 2 EXAMINATION 2018/19****PUBLIC LAW****MODULE NO: LAW4008**

Date: Monday 20 May 2019

Time: 2.00 – 4.00

INSTRUCTIONS TO CANDIDATES:

There are 30 multiple choice questions in Section A of this paper and 6 substantive questions in Section B.

Answer ALL questions in Section A and TWO questions in Section B

You should provide your answers ONLY in the answer book provided.

Section A is worth 30% of the total marks for the paper and Section B is worth 70%

This examination will last 2 hours.

INSTRUCTIONS FOR SECTION A – THE MULTIPLE CHOICE SECTION

There are 30 multiple choice questions in section A and each is worth equal marks. Section A is worth 30% of the marks for the examination. There is only ONE correct answer for each multiple choice question. If you give more than one answer for any multiple choice question you will receive NO marks for that question.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

Should you wish to qualify your multiple choice answer, please write your qualification in the answer book. Make it clear which question your qualification applies to. Only perform this task if you truly believe it to be necessary.

Answers must be completed in the student answer book provided. For example for question 1 write 1 in the left margin followed by the appropriate letter which indicates your answer (a. to d.) on the lined page – the example below demonstrates:

1	a
2	b
3	c
4	d
5	a

Answers not entered in the answer book will be marked as incorrect. Please ensure that you write legibly so that there is no doubt what your answer is.

INSTRUCTIONS FOR SECTION B – THE SUBSTANTIVE QUESTION SECTION

There are six questions in section B and you should answer any two of them. Each question is worth equal marks. Section B is worth 70% of the mark for the examination.

The answers expected refer to legal terms of art. Your answers should therefore relate to this professional vocabulary and not simply to the *general* meaning of words and expression.

Both question paper and answer book must be handed in at the end of the examination.

ANY ANSWERS NOT WRITTEN IN THE ANSWER BOOK WILL NOT BE MARKED.

The examination as a whole amounts to 70% of your mark in this module.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

SECTION A

Answer all questions in this section

1. Which of the following is most accurate?

- a) The Queen appoints as Prime Minister the person who was elected in a General Election.⁹
- b) The Queen appoints as Prime Minister the person who commands the majority of support in the House of Commons.
- c) The Queen appoints as Prime Minister the person who she believes will best lead the country.
- d) The Queen appoints as Prime Minister the member of either the House of Commons or House of Lords who she believes will best lead the country.

2. Which of the following is most accurate?

- a) A federal constitution is one where federal (or central) government controls state (or local) legislatures.
- b) A federal constitution is one where the federal (or central) government controls state (or local) governments.
- c) A federal constitution is one where the division of power between the federal (or central) government and the state (or local) government may be altered by the federal legislature.
- d) A federal constitution is one where the division of power between the federal (or central) government and the state (or local) government is fixed by the constitution.

3. Which of the following most accurately describes the UK constitution?

- a) Codified, supreme and presidential.
- b) Uncodified, supreme and parliamentary.
- c) Codified, supreme and parliamentary.
- d) Uncodified, subordinate and presidential.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

4. Which of the following is accurate?

- a) Marshall and Moodie describe constitutional conventions as 'rules of constitutional behaviour which are considered to be binding by and upon those who operate the constitution.'
- b) The courts will not recognise constitutional conventions.
- c) Where there is a conflict, constitutional conventions take precedence over legal rules.
- d) It is a constitutional convention that the Chancellor of the Exchequer is photographed outside 11 Downing Street on Budget Day.

5. Which of the following best describes the Military Action Convention?

- a) The Government will not commit to engaging in any form of military action without a vote in the House of Commons.
- b) The Government will not commit to engaging in pre-meditated military action without a vote in the House of Commons.
- c) The Government will not commit to engaging in any form of military action without the consent of the House of Commons, the House of Lords and the Monarch.
- d) The Monarch must personally approve any pre-meditated military action before the Government can commit to it.

6. The Sewell Convention is now contained in section 28 of the Scotland Act 1998 (as inserted by the Scotland Act 2016). In *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, the Supreme Court held:

- a) That the Sewel Convention is now a legal rule which can be interpreted and applied by the courts.
- b) The Sewel Convention now has legal effect but is not binding on the Westminster Parliament.
- c) The Sewel Convention remains a constitutional convention and so cannot affect the legal outcome of any case considered by the courts.
- d) The Sewel Convention remains a constitutional convention but the courts can rule on the extent to which it binds the Westminster Parliament.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

7. With regard to the convention of collective responsibility, which of the following is most accurate?

- a) Discussion among MPs in Parliament should be confidential.
- b) Governmental discussions among Ministers should be confidential.
- c) Discussions between Government Ministers and their backbench colleagues should remain confidential.
- d) The duty of confidentiality is binding only on MPs of the governing party.

8. Which of the following is NOT considered an aspect of Individual Ministerial Responsibility?

- a) The most senior Minister in a Department must be a member of the House of Lords.
- b) Ministers must not mislead Parliament.
- c) Ministers are accountable for all that occurs within their Departments.
- d) Ministers should be as open as possible with Parliament and the public.

9. With regard to the traditional view of parliamentary sovereignty, which of the following is most accurate?

- a) Parliament cannot enact a law which conflicts with the European Convention on Human Rights.
- b) Parliament can enact a law which conflicts with European Convention on Human Rights.
- c) Parliament can only enact a law which complies with the UK's international obligations, including the European Convention on Human Rights.
- d) The European Convention on Human Rights requires that certain fundamental rights are protected and Parliament cannot legislate in a way which conflicts with these.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

10. Which of the following is most accurate?

- a) A Bill enacted under the Parliament Acts 1911 & 1949 is not a full Act of Parliament.
- b) A Bill enacted under the Parliament Acts 1911 & 1949 may be ruled invalid by the courts if it affects the personal interests of the Monarch.
- c) A Bill enacted under the Parliament Acts 1911 & 1949 may become a valid Act of Parliament without the consent of the House of Lords.
- d) Under the Parliament Acts 1911 & 1949 the most the House of Lords may do is to delay a Bill from becoming an Act for three years.

11. Which of the following best describes a Private Bill?

- a) Legislation initiated by an MP or a Peer.
- b) Legislation that applies to the public generally.
- c) Legislation concerned with financial matters.
- d) Legislation that applies to particular individuals or organisations.

12. Which of the following best describes the Enrolled Bill Rule?

- a) As long as an Act has been passed by both Houses of Parliament and received Royal Assent, the courts will not inquire into what happened in Parliament during its enactment.
- b) An Act which has been enrolled on the British Library's official register of legislation cannot be questioned by the courts.
- c) An Act of Parliament cannot take effect until it has been entered on the Parliamentary Roll.
- d) Parliament cannot debate a Bill which has not been enrolled on the Speaker's Register.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

13. Which of the following is NOT true?

- a) The Speaker of the House of Commons is also a directly elected MP.
- b) Government Ministers must not enter the Chamber of the House of Commons.
- c) The Prime Minister must be a member of the House of Commons.
- d) The Monarch is one of the three bodies that compose Parliament.

14. Which of the following most accurately reflects the views of Laws LJ in his judgment in *Thoburn v Sunderland City Council* [2003] QB 151?

- a) Parliament cannot legislate in a way which conflicts with its obligations under the European Convention on Human Rights and as a member of the European Union.
- b) Parliament cannot amend fundamental legislation.
- c) The implied repeal rule does not apply to constitutional statutes.
- d) Legislation enacted under the Parliament Acts 1911 and 1949 cannot be used to amend or repeal constitutionally fundamental laws.

15. Which of the following is NOT usually considered an aspect of the principle of separation of powers?

- a) No arm of state should control or interfere in the work of the other two.
- b) Judges should be independent from Government.
- c) No arm of state should exercise powers which more properly belong to either of the other two.
- d) Government Ministers should be members of either the House of Commons or the House of Lords.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

16. The principle of separation of powers requires that the powers of government be divided among which three arms of state?

- a) Executive, Government and Judiciary.
- b) Executive, Congress and the Courts.
- c) Executive, Legislature and the Judiciary.
- d) Executive, Legislature and the Crown.

17. Which of the following is usually considered to be a central requirement of the doctrine of the rule of law?

- a) The courts cannot rule on the validity of an Act of Parliament.
- b) The Monarch must not act in a way which runs counter to public opinion.
- c) Legal advice given to Ministers by the Attorney General should remain confidential.
- d) The Government is under an obligation to act lawfully.

18. Which of the following is NOT given by Dicey as a principle of the rule of law?

- a) The law should apply equally to all.
- b) No one should be punished except for a breach of the law established in the ordinary courts.
- c) The Government should not possess wide discretionary or arbitrary power.
- d) The Government is bound by international law and must respect its international obligations.

19. Which of the following best describes the scope of judicial review?

- a) Judicial review may be used to review the exercise of private or public power by a Government Department.
- b) Judicial review may be used to review the exercise of public power.
- c) Judicial review may be used to review the exercise of private power by a Government body.
- d) Judicial review may be used to review the exercise of private and public power of any organisation exercising functions of a governmental nature.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

20. Which of the following best describes the rule encapsulated in the House of Lords' decision in *O'Reilly v Mackman* [1983] 2 AC 237?

- a) Those exercising public power must do so lawfully.
- b) The courts will not judicially review power derived from contract.
- c) An exercise of public power may only be challenged by way of judicial review.
- d) Judicial review may not be used to review the exercise of power used to incarcerate.

21. Which of the following best describes the purpose of the permission stage in claims for judicial review?

- a) The permission of the court is necessary in order to filter out cases in which, on the balance of probabilities, the facts are unlikely to be proved.
- b) The permission of the court is necessary in order to filter out cases where the claimant has acted improperly.
- c) The permission of the court is necessary in order to filter out cases challenging the exercise of prerogative power.
- d) The permission of the court is necessary in order to filter out unmeritorious or unarguable cases.

22. In *Council of Civil Service Unions v Minister of the Civil Service* [1985] A.C. 374, Lord Diplock stated that irrationality was one of the three heads of review; which of the following is his definition of irrationality?

- a) '... a decision which is so irrational that no rational person could have arrived at it.'
- b) '... a decision which is so unreasonable that no reasonable person could have made it.'
- c) '... a decision which would so offend the morality, logic or sensibilities of any rational person that it may only be classed as irrational.'
- d) '... a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

23. Which of the following best describes the principle in *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759?

- a) That those exercising public power should not disappoint a legitimate expectation that may have arisen about the use of that power.
- b) That those taking a public law decision should not have a financial interest in the outcome of that decision.
- c) That those exercising a public law power which requires a process of consultation should ensure that any consultation is a genuine invitation to give advice and a genuine receipt of that advice.
- d) That those affected by a public law decision should be given an appropriate opportunity to influence the decision-making process.

24. Which of the following best describes the principle underlying the court's decision in *Malone v Metropolitan Police Commissioner* [1979] Ch 344?

- a) In the UK, you are free to act in a way which the law positively permits.
- b) In the UK, you are free to act in a way which is permitted by an Act of Parliament or case law.
- c) In the UK, you are free to act in a way which is permitted by an Act of Parliament or the royal prerogative.
- d) In the UK, you are free to act in any way not prohibited by the law.

25. The right to freedom of expression is protected by which provision of the European Convention on Human Rights?

- a) Article 2.
- b) Article 8.
- c) Article 4.
- d) Article 10.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

26. Which of the following best describes the attitude of the UK courts to the rights protected by the European Convention on Human Rights prior to the coming in to force of the Human Rights Act 1998?

- a) The courts would use the Convention rights as an aid to interpretation if the law was ambiguous or unclear.
- b) The courts would give effect to the Convention rights where an issue concerned security of the person or property.
- c) The courts would give effect to the absolute rights, and Article 2 protecting the right to life, but not to the other Convention rights.
- d) The courts would give effect to the Convention rights only when it was certain beyond reasonable doubt that the European Court of Human Rights would find the right in question had been breached.

27. With regard to so-called qualified rights (such as Article 8 and Article 10) contained in the European Convention on Human Rights, the High Contracting parties may lawfully infringe the *prima facie* right in question if certain conditions are satisfied; which of the following is NOT one of those conditions?

- a) That the infringement is to achieve one of the legitimate aims listed in the second paragraph of the Article in question.
- b) That the infringement complies with the principle of subsidiarity.
- c) That the infringement is prescribed by law.
- d) That the infringement is necessary in a democratic society.

28. Which of the following best describes the situation that must exist in order for a High Contracting Party to derogate from some of its obligations under the European Convention on Human Rights as provided for by Article 15?

- a) That there is a war or other public emergency threatening the life of the nation.
- b) That such derogation is necessary to satisfy a resolution of the United Nations Security Council.
- c) That the financial and security situation is such that derogation is the only rational path.
- d) That such derogation is necessary to avoid conflict with the signatory state's obligations in international criminal law.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

29. Which of the following best describes the doctrine of a margin of appreciation as developed by the European Court of Human Rights?

- a) It appreciates the role of the national court in construing the Convention and, consequently, obliges the European Court of Human Rights to take into account relevant decisions of national courts.
- b) It recognises, and makes special provision for, marginalised groups within each of the signatory states.
- c) It allows the signatory states some flexibility in determining how best to meet their obligations under the European Convention on Human Rights.
- d) It governs the relationship between signatory states in the Council of Europe.

30. Which of the following best describes the obligation which section 2 of the Human Rights Act 1998 imposes on the courts when making a decision in connection with a Convention right?

- a) That the court **may** take into account any relevant advisory opinion, declaration, decision or judgment of the European Court of Human Rights.
- b) That the court **must** take into account any relevant advisory opinion, declaration, decision or judgment of the European Court of Human Rights.
- c) That the court is **obliged to apply** any relevant advisory opinion, declaration, decision or judgment of the European Court of Human Rights.
- d) That the court **should only** take into account any relevant advisory opinion, declaration, decision or judgment of the European Court of Human Rights if the Convention right in question is one of the so-called absolute rights.

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

SECTION B

There are six questions in this section. You MUST answer TWO. Your answer from this section is worth 70% of the overall mark that you will receive for this examination. Each question in this section is worth equal marks.

Instructions: start your answer on a fresh page and make it clear which question you are answering by giving the question number at the beginning of your answer.

1. It is sometimes argued that the United Kingdom does not have a constitution. Explain and evaluate the arguments both for and against the existence of a UK constitution.
2. “The classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom.”
(Lord Steyn in *R (Jackson) v Attorney-General* [2006] 1 AC 262 (HL) [102])

Discuss. Your answer should include an explanation of the “classic account” of parliamentary supremacy and the reasons why it may no longer be entirely adhered to in the United Kingdom.

3. ‘Despite the reforms introduced by the Constitutional Reform Act 2005, it still cannot be said that the United Kingdom strongly adheres to the doctrine of separation of powers. It does, however, have better guarantees of an independent judiciary than ever before.’

Discuss

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

4. 'The meaning of the rule of law is ambiguous and is ascribed different characteristics by different writers. Because of this, no-one could seriously claim that it is fully adhered to in the United Kingdom.'

Discuss.

5. **Answer both a) and b)**

- a) 'The interpretative obligation under s. 3 of the Human Rights Act 1998 gives the courts a great deal of power to shape the law; in contrast, the making a declaration of incompatibility under s. 4 has no effect.'

Discuss; your answer should explain the operation of, and interaction between, ss. 3 and 4 of the Human Rights Act 1998. You should also discuss the operation of s. 10.

(Your answer to this part is worth 50% of the total marks for this question)

AND

- b) 'The Human Rights Act 1998 has vertical and horizontal effect.'

Discuss. Your answer should include an explanation of vertical and horizontal effect and why it is thought, or may be thought, that the Human Rights Act 1998 has these characteristics.

(Your answer to this part is worth 50% of the total marks for this question.)

PLEASE TURN THE PAGE

University of Bolton
School of Law
Law Pathways
Semester 2 Examinations 2018/19
Public Law
Module No: LAW4008

6. The Public Transport Authority (PTA) is created by the (fictional) Public Transport Act 2018. The preamble to the Act states that the purpose of the PTA is to 'regulate the operation of public transport on the roads of the United Kingdom'. Section 5 states:

Section 5 – Licencing of Operators

- (1) All those who wish to operate a public transport service on the United Kingdom road network shall have a Public Transport Licence.
- (2) Operation of a public transport service on the roads without a licence shall be an offence.
- (3) The Public Transport Authority shall be responsible for issuing Public Transport Licences.
- (4) When deciding whether to issue a Public Transport Licence, the Public Transport Authority shall take into account the experience of the applicant in running a public transport service.

On 20 April 2019, the PTA announces the creation of a body, Licencing UK, which will undertake the licencing functions of the PTA.

On 25 April 2019, Licencing UK writes to Netway – a local train operator – stating that Netway must apply for a Public Transport Licence if it wishes to continue operating its rail service.

On 29 April 2019, Adam applies for a licence to operate a bus service between Boltpool and Liverton. He has run a bus service on this route for 15 years, though the application form gives him no opportunity to make this clear. Licencing UK reject his application giving the following reasons:

- He has failed to pay the £50 administration fee necessary to process applications;
- He was publicly critical of the requirement for such licences and of the creation of Licencing UK.

Advise Netway and Adam as to how they may challenge these decisions.

END OF QUESTIONS