

UNIVERSITY OF BOLTON

SCHOOL OF LAW

LLB LAW

SEMESTER 2 EXAMINATIONS 2021/2022

PUBLIC LAW

MODULE NO: LAW4008

Date: Monday 16th May 2022

Time: 2.00pm – 4.00pm

INSTRUCTIONS TO CANDIDATES:

The examination paper is divided into two sections.

- Part A - The initial multiple-choice section contains 30 questions, ALL of which should be attempted.
- Part B - There are SIX questions on this paper, you are required to answer TWO of the questions.

Part A of the paper provides 30% of the marks;

Part B of the paper provides 70% of the marks, 35% per question.

The examination amounts to 100% of your mark in this module.

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PART A – MULTIPLE CHOICE QUESTIONS

PLEASE ANSWER THESE WITHIN YOUR EXAM PAPER BY SELECTING THE CORRECT ANSWER AND NOTING YOUR RESPONSE WITH A CAPITAL A, B, C OR D

EACH QUESTION IS WORTH 1 MARK

Within section A there is only **ONE** correct answer to each question. If you give more than one answer for any multiple-choice question you will receive **NO** marks for that question.

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

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.

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

Please ensure that you write legibly so that there is no doubt what your answer is. It is advisable to answer in capital letters.

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.

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Part A – You must attempt ALL questions in this part

Constitutions

1. Thomas Paine stated: 'A Constitution is not the act of a government, but of a _____ constituting a government, and a government without a constitution is power without a right.' What is the missing word?
 - a) People.
 - b) Document.
 - c) Law.
 - d) Procedure.

2. Which one of the following is correct?
 - a) A written constitution exists where there is a single document containing the fundamental rules of the constitution.
 - b) A written constitution exists where there is a single document, or a series of related documents, containing all the rules of the constitution.
 - c) A written constitution exists where all the rules of the constitution are written down.
 - d) A written constitution exists where there is a single document, or a series of related documents, containing the fundamental rules of the constitution.

3. Which of the following is correct?
 - a) An entrenched constitution is one which can never be changed.
 - b) An entrenched constitution usually requires a special procedure to be changed.
 - c) It is not possible to entrench a constitution.
 - d) All constitutions may be amended as easily as ordinary legislation

4. Choose the correct statement:
 - a) The UK's constitution can be described as federal and monarchical.
 - b) The UK is a republic.
 - c) The UK's constitution can be described as unitary and monarchical.
 - d) The UK's constitution can be described as a federal republic.

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Constitutional Conventions and Ministerial Responsibility

5. What best describes the court's attitude towards constitutional conventions?
- The courts will enforce constitutional conventions.
 - The courts will sometimes enforce constitutional conventions.
 - The courts will recognise but not enforce constitutional conventions.
 - The courts will not allow constitutional conventions to form part of a legal argument.
6. Which of the following is the best definition of the cabinet?
- The Cabinet is made up of senior ministers and is the primary decision-making body at the head of the Government.
 - The Cabinet is made up of all ministers and is the primary decision-making body at the head of the Government.
 - The Cabinet is made up of senior MPs and is the primary decision-making body at the head of the Government.
 - The Cabinet is made up of senior peers and is the primary decision-making body at the head of Government.
7. Which of the following best describes the constitutional convention in question?
- The Queen will appoint a senior politician as Prime Minister.
 - The Queen will appoint as Prime Minister the person who won the General Election.
 - The Queen will appoint whomever she wishes as Prime Minister.
 - The Queen will appoint as Prime Minister the person who commands the majority of support in the House of Commons.
8. According to Jennings, what three things may suggest the existence of a constitutional convention?
- Precedents; a belief that it is binding; agreement by Parliament.
 - Agreement by Parliament; a belief that it is binding; a good reason for the rule;
 - Precedents; a belief that it is binding; a good reason for the rule.
 - Precedents; agreement by Parliament; a good reason for the rule.
9. The three rules that make up collective cabinet responsibility are?
- The unanimity rule, the confidentiality rule and the honesty rule.
 - The unanimity rule, the public respect rule and the honesty rule.
 - The confidentiality rule, the confidence rule and the public respect rule.
 - The unanimity rule, the confidentiality rule and the confidence rule.

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10. What is the difference between a minister's obligation of accountability and her obligation of responsibility?
- a) There is no difference, they mean the same thing.
 - b) Accountability obliges the minister to explain, defend and respond to criticism not only with regard to her own actions but also those of her department's whereas responsibility refers to only those things for which she may be personally held culpable.
 - c) Responsibility obliges the minister to explain, defend and respond to criticism not only with regard to her own actions but also those of her department's whereas accountability refers to only those things for which she may be personally held culpable.
 - d) Accountability refers to a minister's obligation to Parliament whereas responsibility refers to a minister's obligation to the public.

Parliamentary Sovereignty

11. Parliament is made up of which three bodies?
- a) The Prime Minister, the House of Commons and the House of Lords.
 - b) The Government, the House of Commons and the House of Lords.
 - c) The Queen, the House of Commons and the House of Lords.
 - d) The Supreme Court, the House of Commons and the House of Lords.
12. The Parliament Acts 1911 & 1949 provide that Acts of Parliament may be enacted:
- a) Without the consent of the House of Lords.
 - b) Without the consent of the House of Commons.
 - c) Without receiving Royal Assent.
 - d) Without the support of MPs.
13. Which of the following best describes manner and form theory?
- a) Any attempt by Parliament to alter the procedure by which legislation is enacted will be ignored by the courts.
 - b) Any attempt by Parliament to alter the procedure by which legislation is enacted will not be ignored by the courts.
 - c) Parliament can limit its own legislative competence in a variety of manners.
 - d) Parliament can alter the form in which its supremacy is manifested.
14. In which case did the divisional court 'disapply' the Merchant Shipping Act 1988?
- a) *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin)
 - b) *R (Jackson) v Attorney General* [2005] UKHL 56
 - c) *R (Factortame Ltd) v Secretary of State for Transport* [1990] UKHL 7.
 - d) *Gibson v Manchester City Council* [1979] 1 WLR 294.

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15. In the *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), what did Laws LJ suggest with regard to 'constitutional statutes'?
- a) The implied repeal rule does not apply to them.
 - b) The express repeal rule does not apply to them.
 - c) The rule of law does not apply to them.
 - d) EU law does not apply to them.

The Rule of Law

16. The *Entick v Carrington* [1765] EWHC KB J98 may be used as authority for which aspect of the rule of law?
- a) The government cannot seize private possessions.
 - b) Government agents cannot enter private property.
 - c) Warrants issued by the government have no legal value.
 - d) Government according to law.
17. Which of the following gives the best meaning of the rule of law?
- a) Ruled by law.
 - b) Ruled by men.
 - c) Laws should be rules.
 - d) Laws are necessary.
18. Which of the following is NOT in one of the three meanings Dicey ascribed to the rule of law?
- a) No punishment without a breach of the law.
 - b) No one is exempt from the law.
 - c) Rights are derived from case law rather than guarantees in a constitutional document.
 - d) The rule of law encompasses respect for human rights.

Separation of Powers

19. What phrase is sometimes used to refer to the way in which each organ of the state acts to prevent an abuse of power by the other two?
- a) Balance of power.
 - b) Checks and balances.
 - c) Co-operation.
 - d) Fusion of power.
20. The threefold division of power into executive, legislative and judicial is attributed to
- a) Montesquieu.
 - b) Dicey.
 - c) Lord Denning.
 - d) Disraeli.

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21. Which of the following is NOT usually considered as helping to secure judicial independence in the UK?
- a) Protection from arbitrary removal from office.
 - b) Free and fair elections.
 - c) Protection of salary.
 - d) Statutory guarantee under s 3 of the Constitutional Reform Act 2005.

Judicial review - introduction and procedure

22. Which of the following best describes judicial review?
- a) Judicial review is the procedure by which the courts ensure that powerful bodies act lawfully.
 - b) Judicial review is the procedure by which the courts ensure that those exercising public power do so lawfully.
 - c) Judicial review is the procedure by which the courts ensure that those exercising private power do so lawfully.
 - d) Judicial review is the procedure by which the courts ensure that those exercising power derived from an Act of Parliament do so lawfully.
23. The purpose of the permission stage is:
- a) To filter out weak or unarguable cases.
 - b) To give the court permission to hear the case.
 - c) To give the court notice of the particulars of the case.
 - d) To give defendants notice of the particulars of the case.
24. The general time-limit for bringing a claim for Judicial review is:
- a) If possible within 3 months after the grounds to make the claim first arose.
 - b) If possible within 6 months after the grounds to make the claim first arose.
 - c) Promptly and in any event not later than 3 months after the grounds to make the claim first arose.
 - d) Promptly and in any event not later than 6 months after the grounds to make the claim first arose.
25. Which of the following refers to the idea that a body exercising public power should not frustrate a reasonable belief that it will be exercised in a particular way; that belief having arisen by a course of conduct on the part of, or a promise given by, the body?
- a) Reasonable expectation.
 - b) Logical expectation.
 - c) Legitimate expectation.
 - d) Reasonable prospects of expectation.

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Judicial review – grounds for judicial review

26. The three heads of judicial review identified by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service*[1984] UKHL 9 are:
- a) Illegality, immateriality, irrationality.
 - b) Illegality, irrationality, procedural impropriety.
 - c) Immateriality, irrationality, unreasonableness.
 - d) Immateriality, irrationality, impossibility.
27. What is the principle for which *Attorney-General v Fulham Corporation* may be used for authority?
- a) That those exercising public power should not use the power for a purpose other than for which it was granted.
 - b) That those exercising public power cannot establish a private business.
 - c) That those exercising public power must do so in the public interest.
 - d) That those exercising public power cannot establish a laundry service.
28. The English translation of the *audi alteram partem* rule is:
- a) Hear a man in his own cause.
 - b) Hear the other side.
 - c) Hear a case fairly
 - d) Hear a case impartially.

Human Rights – Introduction

29. Section 2 of the Human Rights Act 1998 –
- a) Obliges the UK courts to give effect to the judgments and decisions of the European Court of Human Rights and other Convention bodies.
 - b) Obliges the UK courts to give effect to the judgments and decisions of the European Court of Human Rights and other Convention bodies unless this conflicts with UK law.
 - c) Obliges the UK courts to give effect to the judgments and decisions of the European Court of Human Rights and other Convention bodies unless this conflicts with EU law.
 - d) Obliges the UK courts to take into account the judgments and decisions of the European Court of Human Rights and other Convention bodies.
30. Section 4 of the Human Rights Act 1998 states that:
- a) All UK courts must make a declaration of incompatibility if an Act of Parliament conflicts with the Convention rights.
 - b) All UK courts may make a declaration of incompatibility if an Act of Parliament conflicts with the Convention rights.
 - c) The higher UK courts must make a declaration of incompatibility if an Act of Parliament conflicts with the Convention rights.
 - d) The higher UK courts may make a declaration of incompatibility if an Act of Parliament conflicts with the Convention rights.

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Part B – You must answer TWO questions out of SIX.

1. “The characterisation of Constitutions into ‘written’ and ‘unwritten’ is, however, too limited, for such classification tells neither the whole constitutional story nor necessarily makes the constitution accessible to those seeking to understand it...”
[Hilaire Barnett, *Constitutional and Administrative Law*, [9th Edition, Routledge, 2011]]

Discuss, with reference to the above, the characteristics of the United Kingdom Constitution (35 Marks)

2. “...Sovereignty is the fundamental rule of the common law, for it is the judges who uphold Parliament’s sovereignty. For as long as the judges accept the sovereignty of Parliament, sovereignty will remain the ultimate rule of the constitution...”
[Hilaire Barnett, *Constitutional and Administrative Law*, 11th Edition (Routledge, 2016)]

Discuss, with reference to the above, some of the limitations of sovereignty of Parliament. (35 Marks)

3. “The fact that the most arbitrary powers of the English Executive must always be exercised under Act of Parliament places the government, even when armed with the widest authority, under the supervision, so to speak, of the Courts. Powers, however extraordinary, which are conferred or sanctioned by statute, are never really unlimited, for they are confined by the words of the Act itself, and, what is more, by the interpretation put upon the statute by the judges. Parliament is supreme legislator, but from the moment Parliament has uttered its will as lawgiver, that will become subject to the interpretation put upon it by the judges of the land...”

[A.V Dicey - *Introduction to the Study of the Law of the Constitution* [Eighth Edition, Macmillan and Co, London, 1915]]

Discuss, with reference to the Separation of Powers in the United Kingdom Constitution, the importance of an impartial and independent judiciary.

(35 Marks)

4. ‘Conventions are always emerging, crystallizing and dissolving, and it is sometimes questionable whether a convention has been broken or has simply changed.’

[Colin Turpin, *British Government and the Constitution* (2nd Edition, Northwestern University Press, 1990, P.99)]

Discuss, with particular reference, to the convention of individual ministerial responsibility. (35 Marks)

5. Explain and evaluate the significance of the Human Rights Act 1998.
Your answer should include the operation of sections 3, 4, 6 and 19, and must make references to case law. (35 Marks)

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6. The (fictional) Schools Act 2021 gives the Secretary of State for Education the power to remove individual schools from local authority control and to allow them to be run by private organisations for profit.

Section 3 of the Act states: *(1) The Secretary of State for Education alone shall make the decision as to whether a school should be removed from local authority control. (2) The Secretary of State shall take into account the views of those affected by the decision. (3) The Secretary of State may also consult with any parties as he sees fit.*

On 10th April 2021, the Secretary of State writes to the Head of Blotton School informing him that she is considering using her powers under the Schools Act 2021 to remove the school from local authority control and to allow it to be run by Educate Ltd, a company specialising in technical education. On hearing of this news, Zaman, a parent of a child at the school, begins to organise a petition for other parents and teachers against the plans.

When informed of this during a radio interview, the Secretary of State says that she will not be swayed by the petition and has no intention of listening to the views of those organising or signing it as they are unlikely to have anything useful to say. During the same interview, the Secretary of State also announces that the final decision about Blotton School will be made by A. Spectre, a civil servant.

On 20th April 2021, Mr Spectre writes to the Governors of Blotton School asking for their views about whether the school should be removed from local authority control to be run by Educate Ltd. His letter states that he should receive a reply by 25th April 2021 and that this should be accompanied by a £150 'admin fee'.

On 30th April 2021, Mr Spectre announces that he has decided that Blotton School will be removed from local authority control and will be run by Educate Ltd. On the same day, the local newspaper reports that Mr Spectre's wife is a major shareholder in Educate Ltd.

Advise Blotton School Governors and Zaman about the possible grounds of judicial review, which may enable the decision about the school to be challenged.

(35 Marks)

END OF QUESTIONS