

UNIVERSITY OF BOLTON

SCHOOL OF LAW

LLB LAW

SEMESTER 1 EXAMINATIONS 2022/2023

PUBLIC LAW

MODULE NO: LAW4008

Date: Tuesday 10th January 2023 Time: 10.00am – 12.00pm

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 6 questions on this paper, you are required to answer 2 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

1. Which one of the following is correct?
 - a) There is no agreed definition of the word 'constitution'.
 - b) There is no definition of the word 'constitution'.
 - c) Everyone agrees what the word 'constitution' means.
 - d) All lawyers agree what the word 'constitution' means.

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 uncodified and parliamentary.
 - b) The UK's constitution can be described as codified and parliamentary.
 - c) The UK's constitution can be described as uncodified and presidential.
 - d) The UK's constitution can be described as codified and presidential.

5. What best describes the court's attitude towards constitutional conventions?
 - a) The courts will enforce constitutional conventions.
 - b) The courts will sometimes enforce constitutional conventions.
 - c) The courts will recognise but not enforce constitutional conventions.
 - d) The courts will not allow constitutional conventions to form part of a legal argument.

6. Why can the Government usually rely on the support of the majority of MPs?
 - a) Because the Prime Minister, as head of the Government, is appointed by the Queen and MPs prefer to be loyal to the Queen.
 - b) Because the Prime Minister, as head of the Government, is the person who can command the majority of support in the House of Commons.
 - c) Because it is the job of MPs to support the Government.
 - d) Because MPs believe that they have more chance of being re-elected if they support the Government.

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7. Which of the following is the best definition of the Cabinet?
- a) The Cabinet is made up of senior ministers and is the primary decision-making body at the head of the Government.
 - b) The Cabinet is made up of all ministers and is the primary decision-making body at the head of the Government.
 - c) The Cabinet is made up of senior MPs and is the primary decision-making body at the head of the Government.
 - d) The Cabinet is made up of senior peers and is the primary decision-making body at the head of Government.
8. According to Jennings, what three things may suggest the existence of a constitutional convention?
- a) Precedents; a belief that it is binding; agreement by Parliament.
 - b) Agreement by Parliament; a belief that it is binding; a good reason for the rule;
 - c) Precedents; a belief that it is binding; a good reason for the rule.
 - d) Precedents; agreement by Parliament; a good reason for the rule.
9. Which of the following best describes the constitutional convention?
- a) All ministers must be members of the House of Commons.
 - b) All senior ministers must be members of the House of Commons.
 - c) All ministers must be a member of the House of Commons or the House of Lords.
 - d) There should be an equal number of ministers in the House of Commons and the House of Lords
10. Which of the following best describes the constitutional convention in question?
- a) The Queen may refuse to assent to a Bill that has been passed by Parliament if she strongly disagrees with it.
 - b) The Queen may freely refuse to assent to a Bill that has been passed by Parliament.
 - c) The Queen must always assent to a Bill that has been passed by Parliament.
 - d) The Queen must assent to a Bill that has been passed by Parliament when advised to do so by her ministers.
11. Parliamentary supremacy is also known as:
- a) The Queen in Parliament.
 - b) Parliamentary system.
 - c) Parliamentary majority.
 - d) Parliamentary sovereignty.

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- 12.** Simply put, parliamentary supremacy means:
- Parliament is the most important institution in the UK.
 - Parliament can enact any law.
 - The House of Commons is more important than the House of Lords.
 - Parliament is more important than the Monarch.
- 13.** What do we mean when we say Parliament cannot bind itself?
- Parliament cannot enact a law that cannot be changed by a future Parliament.
 - Parliament cannot rely on past legislation.
 - Parliament cannot override the courts.
 - Parliament cannot rule on its own legislation.
- 14.** In which case did the Divisional Court 'disapply' the Merchant Shipping Act 1988?
- Thoburn v Sunderland City Council [2002] EWHC 195 (Admin).
 - R (Jackson) v Attorney General [2005] UKHL 56.
 - R v Secretary of State for Transport ex parte Factortame Ltd (no.1) [1990] 2 AC 85
 - Gibson v Manchester City Council [1979] 1 WLR 294.
- 15.** In Thoburn v Sunderland City Council [2002] EWHC 195 (Admin), what did Laws LJ suggest with regard to 'constitutional statutes'?
- The implied repeal rule does not apply to them.
 - The express repeal rule does not apply to them.
 - The rule of law does not apply to them.
 - EU law does not apply to them.
- 16.** Which of the following best describes the principle of equality inherent in the rule of law?
- The law should apply equally to all.
 - The law applies equally to all and any differences in treatment must be legitimately justified.
 - The law applies equally to all except members of royalty or the ruling classes.
 - The law applies equally to all, though differences in treatment due to physicality, locality or sexuality are justified.
- 17.** What was Raz's guiding principle when producing his eight principles inherent in the rule of law?
- That the law should protect people's rights.
 - That law should be made in the correct fashion.
 - That the law should be just.
 - That the law should be such that people are able to be guided by it.

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18. Which of the following is NOT in one of the three meanings Dicey ascribed to the rule of law?
- No punishment without a breach of the law.
 - No one is exempt from the law.
 - Rights are derived from case law rather than guarantees in a constitutional document.
 - The rule of law encompasses respect for human rights.
19. What three bodies carry out the three functions of government in the UK?
- House of Commons, House of Lords, Queen.
 - Government, Parliament, Courts.
 - Government, Parliament, Queen.
 - House of Lords, Supreme Court, Queen.
20. The threefold division of power into executive, legislative and judicial is attributed to
- Montesquieu.
 - Dicey.
 - Lord Denning.
 - Disraeli.
21. Bradley and Ewing suggest that separation of powers requires separation in terms of:
- Personnel, control and functions.
 - Buildings, budgets and business.
 - People, buildings and tasks.
 - Laws, application and effort.
22. Which of the following best describes judicial review?
- Judicial review is the procedure by which the courts ensure that powerful bodies act lawfully.
 - Judicial review is the procedure by which the courts ensure that those exercising public power do so lawfully.
 - Judicial review is the procedure by which the courts ensure that those exercising private power do so lawfully.
 - Judicial review is the procedure by which the courts ensure that those exercising power derived from an Act of Parliament do so lawfully.
23. Which of the following is NOT a remedy in judicial review?
- A judiciary order.
 - A quashing order.
 - A mandatory order.
 - A prohibiting order.

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24. The general time-limit for bringing a claim for Judicial review is:
- If possible within 3 months after the grounds to make the claim first arose.
 - If possible within 6 months after the grounds to make the claim first arose.
 - Promptly and in any event not later than 3 months after the grounds to make the claim first arose.
 - Promptly and in any event not later than 6 months after the grounds to make the claim first arose.
25. The sufficient interest requirement is used to prevent claims by:
- People not really interested in the matter in question.
 - Private individuals.
 - Businesses and large organisations.
 - Busybodies, troublemakers and those motivated by ill-will or malice.
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:
- Illegality, immateriality, irrationality.
 - Illegality, irrationality, procedural impropriety.
 - Immateriality, irrationality, unreasonableness.
 - Immateriality, irrationality, impossibility.
27. In which case did the court find that the authority had punished a rugby club even though it had committed no wrong?
- Macarthys v Smith* [1980] 3 WLR 929.
 - Padfield v Minister of Agriculture* [1968] UKHL 1.
 - Wheeler v Leicester City Council* [1985] AC 1054.
 - Thoburn v. Sunderland City Council* [EWHC] 195 (Admin).
28. Which of the following best defines unreasonableness?
- A decision so unreasonable that the Government cannot be bound by it.
 - A decision so unreasonable that no reasonable body could have made it.
 - A decision so unreasonable that local authorities should not be bound by it.
 - A decision so unreasonable that it is irrational.
29. What effect did the European Convention on Human Rights have in the UK prior to the Human Rights Act 1998?
- The UK courts would use them to resolve any ambiguities only when the law was ambiguous.
 - They had no effect at all.
 - The UK courts would give them declaratory effect.
 - The UK courts would enforce the rights against public bodies.

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- 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.

End of Part A

Please turn the page for Part B

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

1. “...Not to be left out of the world of constitutional democracies, British writers define constitution in a way that seems to give us one too ... It simply shifts the ground, by using the word in an entirely different way...”
- [FF Ridley, ‘There is no British Constitution: A Dangerous Case of the Emperor’s Clothes’ [1988] *Parliamentary Affairs* 340
- Examine, with reference to the above, whether the United Kingdom has a 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) 112.
- Discuss. Your answer should make references to some of the limitations of sovereignty of Parliament.**
- (35 marks)**
3. “...All would be lost if the same man or the same body...exercised these three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes and disputes of individuals...”
- Baron Montesquieu, *L’Esprit de Lois* (The Spirit of the Laws) 1748
- Critically discuss whether the United Kingdom has an effective separation of powers.**
- (35 marks)**
4. The Convention of individual ministerial responsibility is now more concerned with accountability than with responsibility. This ambiguity demonstrates why constitutional conventions are an inappropriate attempt to limit executive power.
- Discuss.**
- (35 Marks)**

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5. The (fictitious) Trading at Markets Act 2022 allows local Borough Councils to grant and withdraw licenses to trade on markets within their area, 'however they see fit.' Blotton Borough Council has delegated its powers under this Act to its Licensing Commission. The Commission further delegates their powers to the Trade Markets Manager, who can now withdraw and grant licenses.

Blotton Borough Council has adopted an objective that Blotton will be 'the greatest organic town' on the basis that 'organic farming is the way forward in bettering the environment.' As a result of this objective, the Licensing Commission has drafted a policy of rejecting all new applications for licenses to trade in non-organic produce.

Patrick Bateman, who has moved to Blotton to trade after seven successful years trading in non-organic produce in the Shire, applies for a market trader's license to sell non-organic produce. His application is rejected on the grounds that it is not consistent with the policy.

Jay Gatsby has operated a meat stall on Blotton Market for 10 years. He does not see the point in selling organic produce. Seeing many of the market stalls around him advertising and displaying organic produce, he puts up a poster in response on his stall saying, 'Original non-organic lamb shanks – simply the best!' The Trade Markets Manager demands that he removes the poster as it does not fit 'with the Council's image of Blotton Market.' When he refuses to do so, the Trade Markets Manager withdraws his license.

Gatsby appeals to the Licensing Commission, who grant him a hearing. At the hearing, one member of the panel missed proceedings while he answered his telephone. Gatsby was asked to leave while the panel members discussed 'one or two matters' with the representative of the Licensing Commission. Gatsby was not told about what was discussed when he came back in. The hearing is overseen by Councillor Vader, who is also the district chair of the local Soil Association Campaign.

Gatsby's appeal was dismissed.

Advise Bateman and Gatsby on the possibility of issuing judicial review proceedings.

(35 marks)

6. With respect to the role of the UK courts in the protection of human rights, what constitutional difficulties have been highlighted by the passing and implementation of the Human Rights Act 1998?

Discuss. Your answer should make references to Sections 3, section 4 and section 6 of the Act.

(35 marks)

End of Paper