

Unit 12



Title:	Public Law
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the key features of UK public law	<p>1.1 Explain the sources of public law and their interrelationship</p> <p>1.2 Analyse the impact on UK public law of the law of the European Union</p> <p>1.3 Analyse the impact of international law on UK public law</p>	<p>1.1 The elements which typically constitute UK public law, eg, the idea of “the rule of law”, the source and nature of the UK constitution; civil liberties and human rights in the UK; the administration and review of UK law through its public institutions and bodies</p> <p>1.2 The institutions of the EU and their functions; the EU legislative process; the categories of EU primary and subordinate legislation; direct effect ; eg, <i>Van Gend en Loos v Nederlandse Administratie der Belastingen (1963)</i> CJEC EU law eg, <i>Costa v ENEL (1964)</i> CJEC takes precedence over UK domestic law subject to the judgement in <i>MacCarthys v Smith (1979)</i></p> <p>1.3 Key sources of international law in domestic English law are treaties and customary international law; the relationship between international law and domestic law is one of dualism whereby the two systems function separately and is regulated by two key principles: (a) the principle non-justiciability; and (b) the principle of no direct effect; refer to</p>

	<p>1.4 Apply an understanding of the key features of UK public law to a given situation</p> <p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>Lord Bingham's Hamlyn Lectures 2009: Widening Horizons</p> <p>1.4 Application of understanding to a complex scenario</p> <p>1.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>2 Understand the meaning of "the rule of law"</p>	<p>2.1 Explain the key elements which make up the rule of law in the UK</p>	<p>2.1 The exposition of Dicey on the rule of law in <i>Introduction to the Study of the Law of the Constitution (1885)</i>; an explanation of the following elements identified by Tom Bingham: <i>The Rule of Law (2010)</i>: ie, the law must be accessible, intelligible, clear and predictable: eg, <i>Fothergill v Monarch Airlines Ltd (1981)</i>; questions of right and liability should be resolved by law and not the exercise of discretion: eg, <i>Scott v Scott (1913)</i>; the law of the land should apply equally to all (Denning: "be you ever so high the law is above you"): eg, <i>Gouriet v Union of Post Office Workers (1977)</i>; the law must afford adequate protection for human rights: eg, <i>Engel v The Netherlands (No 1) (1976)</i>; the law must deal with the resolution of civil disputes without inordinate cost or delay: eg, <i>R v Lord Chancellor Ex p Witham (1978)</i>; ministers and public officers must exercise the powers conferred on them according to the law, reasonably and in good faith: eg, <i>R (on the application of S) v Secretary of State for the Home Department (2006)</i>; the adjudicative procedures provided by the state should be fair: eg, <i>R v Sussex Justices Ex p McCarthy (1924)</i>; the state should comply with its obligations in international law: eg,</p>

	<p>2.2 Analyse the factors which have the potential to undermine the rule of law in the United Kingdom</p> <p>2.3 Apply an understanding of the elements constituting the rule of law to a given situation</p> <p>2.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><i>The Christina (1934)</i></p> <p>2.2 The factors include: pressure from the Executive: eg, adverse government reaction to judgments on control orders; deference on the part of the High Court: eg, <i>Secretary of State for the Home Department v Rehman (2001)</i>; international pressure: eg <i>(Corner House Research and Another) v Director of the Serious Fraud Squad (2008) HL</i> and <i>Binyam Mohammed v Secretary of State for Foreign and Commonwealth Affairs (2010)</i>; civil unrest: eg, industrial disputes such as the miners' strike in 1984 and civil disobedience eg, resistance to the Poll Tax</p> <p>2.3 Application of understanding to a complex scenario</p> <p>2.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>3 Understand the nature of the UK constitution</p>	<p>3.1 Analyse the sources of the constitution</p> <p>3.2 Analyse the consequences of constitutional changes effected by devolution</p>	<p>3.1 The main sources: statutes defined as "constitutional statutes", eg, the Act of Settlement 1700; see <i>Thoburn v Sunderland City Council (2002)</i> for a discussion of constitutional statutes; constitutional case law: eg, <i>Entick v Carrington (1765)</i>; law and custom of Parliament; constitutional conventions; proposals for reform; eg, a Bill of Rights and the arguments for and against</p> <p>3.2 Consideration of the principal powers of the Scottish Parliament; analysis of the relationship between the Scottish Parliament and the UK Parliament and the problems that have arisen including the West Lothian Question and contentious financial issues, eg, the</p>

	<p>3.3 Explain the organisation, functions and powers of the Judiciary</p> <p>3.4 Analyse the composition and function of the Executive</p> <p>3.5 Analyse the composition, functions and powers of Parliament</p>	<p>disproportionate Exchequer subsidy compared with England; the principal powers of the Welsh Assembly; the state of devolution in Northern Ireland; the proposals for devolution in England</p> <p>3.3 Explanation of the organisation of the courts systems in Britain; the procedure for the appointment and dismissal of judges; the role of the new Supreme Court</p> <p>3.4 Consideration of the composition of the Executive; the sources of executive power, including the prerogative power and Public Interest Immunity procedure; eg, <i>R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (2010) CA</i>; proposals for reforming the exercise of the prerogative power by the Executive (see Green Paper <i>The Governance of Britain (2007)</i>); cabinet and ministerial responsibility; powers of the Prime Minister; the status of the civil service; the provisions of the Crown Proceedings Act 1947; Ministerial Code</p> <p>3.5 A summary of the nature of Parliamentary Sovereignty; ie, no Parliament is bound by its predecessor and there is nothing on which it is unable to legislate; the doctrine of express and implied repeal; the institutions which make up Parliament; the composition of the House of Lords and the House of Commons and the status of the Sovereign (fount of honour); proposals for the further reform of the House of Lords; the interrelationship between the component institutions of Parliament and, in particular, the provisions of the Parliament Acts 1911 and 1949; relevant</p>
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	<p>3.6 Analyse the status, powers and composition of the different classes of executive agencies and Non-Departmental Public Bodies (NDPBs)</p> <p>3.7 Explain the powers, organisation and functions of local authorities</p>	<p>case law: eg, <i>R (Jackson) v Attorney General (2005)</i>; public bill procedure and the procedure for dealing with the different classes of subordinate legislation; the work of Select Committees; procedure for supply and the role of the Comptroller and Auditor General; the doctrine of the separation of powers as defined by Locke in <i>Second Treatise of Government (1690)</i> and by de Montesquieu in <i>The Spirit of the Laws (1754)</i>; the extent to which Parliament, the Executive and the Judiciary are separate in fact; The Constitutional Reform Act 2005; the utility of such separation; the arrangements for Parliamentary elections and the penalties for non-compliance, eg, <i>Watkins v Woolas (2010)</i>; parliamentary privilege and MPs' expenses as in eg, <i>Regina v Chaytor (2010)</i></p> <p>3.6 The classification of "Next Steps" executive agencies established after the Ibbs Report <i>Improving Management in Government: The Next Steps (1988)</i>; eg, the Prison Service and the Employment service; Non-Departmental Public Bodies (NDPBs): (1) Executive bodies, eg, the Human Fertilisation and Embryology Authority, (ii) Advisory Bodies, eg, the Law Commission, (iii) Tribunals, eg, the Mental Health Review Tribunal; levels of ministerial responsibility and the distinction between "policy" and "operations"</p> <p>3.7 A knowledge of the sources of the powers of local authorities; the powers of local authorities to make by-laws; the ways in which local authorities obtain revenue and the controls on their expenditure; the provisions for the declaration of the interests of local authority</p>
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	<p>3.8 Explain the powers, organisation and functions of police authorities</p> <p>3.9 Explain the statutory and common law rules governing corruption</p> <p>3.10 Apply an understanding of the nature of the UK constitution to a given situation</p> <p>3.11 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>members and the arrangements for their regulation; the arrangements for elections for local authorities</p> <p>3.8 A knowledge of the sources of the powers of police authorities; appointment of members; their finance and controls on expenditure</p> <p>3.9 An explanation of the main provisions of The Corruption Acts 1889 -1916; the common law on misfeasance in public office, eg, <i>Karagaozlu v Commissioner of Police of the Metropolis (2007)</i>; Bribery Act 2010</p> <p>3.10 Application of understanding to a complex scenario</p> <p>3.11 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
4 Understand the citizen's civil liberties and human rights	<p>4.1 Analyse the liberties enshrined in statute and the residual liberties at common law</p> <p>4.2 Explain how the UK courts deal with issues of incompatibility between UK legislation and the provisions of the ECHR</p> <p>4.3 Summarise the jurisdiction and powers of the European Court of Human Rights (ECtHR)</p> <p>4.4 Analyse the effectiveness of the statutory and common law provisions for guaranteeing freedom of expression</p>	<p>4.1 The key provisions of the Human Rights Act 1998 enacting the European Convention on Human Rights (the ECHR); common law liberties as in, eg, <i>Entick v Carrington (1765)</i> and <i>Somerset v Steuart (1772)</i></p> <p>4.2 HRA98 s4(2) and (4(6)); eg, <i>Gaidan v Godin-Mendoza (2004)</i> on the approach of the courts, including the European Court of Human Rights, to incompatibility</p> <p>4.3 Procedures for the citizen to access the ECtHR; powers of the ECtHR</p> <p>4.4 Common law provisions, eg, <i>Regina v Shayler (2002)</i>; the provisions of Article 10 of the ECHR; eg, <i>Reynolds v Times Newspapers Ltd</i></p>

	<p>4.5 Analyse the statutory and common law provisions for both ensuring and curtailing the freedom of the citizen</p> <p>4.6 Analyse the effectiveness of the statutory and common law provisions governing freedom of assembly and public order</p>	<p>(1999) and <i>Jameel (Mohammed) v Wall Street Journal Europe Sprl</i> (2005) the provisions of the Defamation Act 1996, The Contempt of Court Act 1988 and the position of the press; the Official Secrets Acts 1911-89; the Public Interest Disclosure Act 1998 (the “whistle-blower’s charter”)</p> <p>4.5 The Habeas Corpus Acts 1640-1862; the common law on <i>habeas corpus</i>, eg, <i>R v Governor of Pentonville Prison ex p Azam</i> (1974), <i>Hilali v Governor of Whitemoor Prison</i> (2008); the provisions of the Police and Criminal Evidence Act 1984 (as amended) in relation to stop and search, formalities for arrest, detention and treatment in custody, and search and seizure of property; the statutory and common law provisions whereby a court can reject evidence improperly obtained: PACE 1984 ss76 and 78 and, eg, <i>R v Chalkley</i> (1998); the provisions which ensure for the citizen a right to a fair trial: Article 6 ECHR; the key provisions of the Freedom of Information Act 2000; the state of the law on privacy: the provisions of Article 8 ECHR and the case law on breach of confidence and in particular <i>Wainright v Home Office</i> (2003) and <i>Douglas v Hello!</i> (2001) and (2005); the statutory provisions for the protection of personal data: the Data Protection Act 1998</p> <p>4.6 Relevant statutes: the main provisions relating to assemblies and processions: eg, <i>Austin v Commissioner of the Police of the Metropolis</i> (2009) HL and the Public Order Act 1986 (POA86); other public order offences under the POA86 (as amended); the Criminal Justice and Police Act 2001, and the Serious</p>
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	<p>4.7 Analyse the impact of the provisions of the anti-terrorist legislation passed since 1999 on the freedom of the individual</p> <p>4.8 Apply an understanding of the citizen's civil liberties and human rights to a given situation</p> <p>4.9 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>Organised Crime and Police Act 2005, particularly riot (s1), violent disorder (s2), affray (s3), using threatening and abusive language (s4), and disorderly conduct (s5); the provisions of the Protection from Harassment Act 1997; and the common law on breach of the peace: eg, <i>Bibby v Chief Constable of Essex Police (2001)</i> and <i>R (Laporte) v Chief Constable of Gloucestershire Constabulary (2006)</i> HL</p> <p>4.7 The effect of this legislation on curtailing the freedom of the citizen as in, eg, Part V Terrorism Act 2000; Prevention of Terrorism Act 2005; knowledge of the leading cases on control orders: eg, <i>Secretary of State for the Home Department v JJ and Others (2007)</i> stop and search eg, <i>Gillan and Quinton v United Kingdom (2009)</i> ECHR</p> <p>4.8 Application of understanding to a complex scenario</p> <p>4.9 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>5 Understand the way in which administrative acts and omissions are supervised and controlled</p>	<p>5.1 Explain the various means by which the actions of public bodies can be reviewed and controlled</p> <p>5.2 Analyse the jurisdiction, role and powers of the High Court in relation to judicial</p>	<p>5.1 Understanding the key elements of judicial review; the powers of tribunals and the terms of reference of the Parliamentary Commissioner for Administration, the Health Service Commissioner and the Commissioners for Local Administration in England, Wales, Scotland and N Ireland; the Crossman Catalogue</p> <p>5.2 The provisions of Part 54 Civil Procedure Rules; the law in relation to <i>locus standi</i> for</p>

	<p>review</p> <p>5.3 Explain the jurisdiction, role and powers of tribunals</p>	<p>applicants as in, eg, <i>R v Secretary of State for the Environment ex p Rose Theatre Trust Co (1990)</i>; the requirement that the matter be a public law issue as in, eg, <i>O' Reilly v Mackman (1983)</i>; and that the body complained against must be a public law body or a body exercising public law functions as in, eg, <i>R v Disciplinary Committee of the Jockey Club ex p Aga Khan (1993)</i>; the High Court cannot substitute its own view for that of the decision maker on the substantive issue; the categories of administrative fault for which judicial review will lie, ie, <i>CSSU v Minister for the Civil Service (1945)</i> and relevant case law; the circumstances in which the Government can obtain a Public Interest Immunity Certificate from the Court and relevant case law; the position of the executive in relation to tort and contracts under the Crown Proceedings Act 1947; the remedies available to a successful applicant for judicial review and their adequacy or otherwise: eg, <i>Roy v Kensington Family Practice Committee (1992)</i>; the concept of <i>judicial deference</i> which may arise when a court considers government policy; the doctrine of legitimate expectation, see eg, <i>R v North and East Devon Health Authority ex parte Coughlan (2001)</i> and <i>R (Niazi) v Secretary of state for the Home Department (2008)</i></p> <p>5.3 The powers of tribunals; supervision of tribunals; the provisions of the Leggatt Report <i>Tribunals for Users (2002)</i>; the changes made to the tribunal system in the Tribunals, Courts and Enforcement Act 2007; the work of the Administrative Justice and Tribunals Council; the strengths and weaknesses of the 2007 Act</p>
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	<p>5.4 Explain the statutory procedures for convening, holding and reporting public enquiries</p> <p>5.5 Analyse the effectiveness of judicial review, tribunals, public enquiries and ombudsmen as vehicles for providing redress for the citizen.</p> <p>5.6 Apply an understanding of the way in which administrative acts and omissions are supervised and controlled to a given situation</p> <p>5.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>5.4 Key provisions only of the Inquiries Act 2005 and the Enquiries Rules 2006</p> <p>5.5 Judicial review: cost of judicial review; limitation of judicial review remedies (less generous than civil law); ombudsmen: limitations on remedies; slowness of ombudsman procedures; ombudsman access free to complainants; ombudsman limitations on jurisdiction; public enquiries: slow procedures; evidence not on oath; no guarantee of implementation of recommendations; rights of audience limited; limited facility for cross-examination; tribunals: the impact of the Leggatt reforms; increased independence from government; improved access for the citizen; improved quality of delivery; improved case management</p> <p>5.6 Application of understanding to a complex scenario</p> <p>5.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Public Law
Unit expiry date	31March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

This specification is for 2012 examinations