Examiners’ report 2011

265 0020 Public law – Zone B

Introduction

As in previous years, the quality of papers ranged from First Class to poor Fails. In this report the Examiners will discuss what constitutes a ‘good’ answer and what does not.

Extracts from answers to Questions 5 and 7, both of which were statistically popular with candidates, are included. Please note that spelling mistakes and other grammatical errors have been left as they appeared on the examination script.

General remarks

Irrespective of the actual questions on the examination paper, there are a number of common problems which detract from the quality of the answers given.

The first relates to understanding and interpreting the question. Although a number of the same topics will appear on the paper each year, candidates must appreciate that this does not mean that there is a standard answer which will be adequate for the particular question. It is extremely important that candidates take care in interpreting what the actual question is asking, and adapt their knowledge of the topic accordingly. The Examiners can spot a ‘rote-learned’ pre-prepared answer and it is rarely adequate for more than a bare pass, if that.

A related issue concerns relevance. One of the main purposes of the 15-minute reading time is to enable candidates to read and reflect on what the questions require, and a correct interpretation is crucial for success. Too often Examiners find that candidates offer a reasonable or good answer on a topic which is not on the examination paper, and answers such as this cannot achieve a pass mark. This emphasises the importance of taking care in reading the paper.

Another general difficulty lies in the length of answers given. While there can be no fixed required length of answer – some very good answers can be very succinct – a few paragraphs on less than two sides of paper is generally not enough to give an adequate analysis and discussion of the particular topic.

The quality of written English is a further difficulty for many candidates. Examiners are sometimes faced with a batch of scripts from a centre where the quality of written English is too poor to enable a candidate to pass. This is a matter which needs to be addressed during the academic year, with candidates regularly practising their written English in order to be prepared for the examination.
Specific comments on questions

Question 1

By what means and to what extent do laws and conventions achieve an adequate separation of powers between the executive, judiciary and legislature?

This question was statistically 'popular' with candidates and gave rise to a large number of very good answers. However, there were also far too many poor answers, and it is important to recognise the reasons for this.

One good starting point is to explain the nature and importance of the separation of powers under any constitution, noting that this is a concept of ancient origins. The identification of the three major institutions of the state, and a brief explanation of their principal functions could then be offered. In order to address the question adequately, it was helpful to organise the discussion into one relating to the executive/legislature; legislature/judiciary; judiciary/executive.

On the executive/legislature relationship, candidates should have discussed the fact that the executive sits in the legislature (principally the House of Commons), and controls the parliamentary timetable. However, it should also have been noted that the House of Commons Disqualification Act 1975 supports the separation of powers by preventing members of the civil service, judiciary or armed forces from membership of the House of Commons. The Act also prevents the Prime Minister from appointing all his MPs to ministerial office (thereby binding them under the doctrine of collective ministerial responsibility) by limiting the number of salaried ministers to 95.

Further the presence of the executive in the legislature facilitates the scrutiny of government legislation and administration. This is further supported by the convention of individual and ministerial responsibility, and the convention that a government losing a vote of no confidence must resign office.

On the legislature/judiciary relationship, candidates should have mentioned the House of Commons Disqualification Act 1975 (above) and discussed the conventions which deter MPs from criticising judicial decisions and the rules prohibiting discussion of actual and/or pending cases. There should also have been a discussion of the role of the judges in developing the common law and the rules of statutory interpretation which are designed to ensure that the judiciary correctly interprets Parliament's will. The Constitution Reform Act 2005 and the establishment of a Supreme Court separated from Parliament should have been discussed.

On the judiciary/executive relationship, there should have been a discussion of the Constitutional Reform Act 2005 and the reform of the office of Lord Chancellor, albeit briefly.

Where too many candidates ‘went astray’ was by failing to read the question with due care. It asked very specifically for a discussion of the ‘laws and conventions’ which regulate the separation of powers. This many candidates failed to do: offering instead a generalised ‘all I know’ type answer, without discussing laws and conventions, and accordingly failed.
Question 2
Discuss the case for a fully elected second chamber in the United Kingdom Parliament.

This question focuses on reform of the composition of the House of Lords which was generally well answered. A useful starting point would be a brief discussion of the need for and advantages of a second chamber: bicameralism. There should then have been a discussion of the current composition and powers of the House of Lords and a brief explanation of the Parliament Acts 1911 and 1949.

Although the focus of the question is on future reform, reforms of the past are relevant and the Life Peerages Act 1958, the Peerage Act 1963 and the House of Lords Act 1999 should have been discussed. The difficulties in reforming the House of Lords (on the reform agenda since 1911) should have been discussed. These centre principally on the balance of power between the two Houses, a balance which works well under current arrangements but which might be difficult to sustain if there is a fully elected House in the future.

In discussing the case “for a fully elected” second chamber, candidates should have discussed the requirements of democracy, namely that a legislative body in a modern democratic state should be fully elected and thereby accountable to the people. However, it should also have been recognised that there are very real difficulties in such reform. Among these are the constituencies to be represented, the length of term of office, and whether this should be renewable or not.

Furthermore the size of the second chamber needs to be decided: all recent reform proposals have suggested a smaller House. The voting system to be used for elections to the Upper House also needs to be considered. The adoption of the Simple Majority System would replicate the deficiencies of that system, whereas to adopt a more proportional system without reforming the voting system for the Commons would result in the House of Lords being more representative than the Commons.

And finally, all reform proposals insist that the House of Commons must retain its powers over the House of Lords. This takes the discussion back to the Parliament Acts and conventions which regulate the relationship currently, and whether or not these could be sustained if the Upper House was fully elected.

Many of the best candidates were able to offer their view that an elected House posed too many problems, and that a partially elected and partially appointed House could provide the way forward.

A small minority of candidates misinterpreted the question, thinking that the ‘second chamber’ referred to the House of Commons.

Question 3
‘In the absence of a written constitution, the United Kingdom Parliament is the sovereign law-making power, incapable of limiting its own power or being limited by an external power.’ Discuss.

This is a classic question on sovereignty and was generally well handled. A good starting point would be to explain that the British constitution is if not fully ‘unwritten’, at least not codified in the manner of a written constitution. Many good answers pointed out that under a written constitution, it is the constitution itself (as interpreted by a Supreme Court) which is the highest authority, whereas under the British constitution that vacuum is filled by the doctrine of parliamentary sovereignty or supremacy.
There should then have followed an in-depth analysis of sovereignty and the many challenges it has faced over the years. Many candidates adopted Dicey’s three-part definition/explanation of sovereignty which, irrespective of its contemporary value, remains a useful vehicle for evaluating the concept.

The doctrine of implied repeal should have been discussed to illustrate the manner in which the judges give effect to the latest expression of Parliament’s will. A brief mention of the emergence of the ‘constitutional statute’ could have been made here.

Among the many challenges which the concept has faced are the Acts of Union with Scotland and Ireland (inter alia MacCormick’s case) and ‘manner and form’ theory (Trethowan; Harris; Ranasinghe). More recent challenges such as membership of the European Union should have been discussed in some detail, including a discussion of the European Communities Act 1972 (does s.2 ‘bind’ future Parliaments?) and case law from the European Court of Justice and the domestic courts.

Many candidates also discussed the Human Rights Act 1998, pointing out the declarations of incompatibility do not affect the validity of the offending statute, and that it remains for Parliament to amend the law.

Finally, many of the best candidates were able to explain that whereas Parliament is theoretically unlimited in its law-making power, it is in fact constrained on all sides by the electorate, by economics and by obligations imposed by international law.

**Question 4**

**Critically assess the extent to which Parliament and the courts are able to control the exercise of the royal prerogative.**

The starting point for discussion is a definition of the royal prerogative (Dicey, Blackstone), together with examples drawn from foreign and domestic affairs to demonstrate the breadth of power which may be exercised under the prerogative. The importance of judicial and/or parliamentary control over this power should also have been discussed.

Candidate should then proceed to discuss judicial control and parliamentary control. In relation to judicial control, the principal cases on the relationship between statute and the prerogative should have been discussed (de Keyser’s; Laker; Northumbria; Fire Brigades Union case). The concept of justiciability which limits the control which the courts can exercise should have been discussed. The GCHQ case; Everett and Bentley were relevant here.

On parliamentary control, the procedures such as Question Time, debate and Select Committee enquiries should have been discussed and evaluated. The conventions which apply and which enable a government to decline to answer questions on matters of high policy should be discussed, and it should have been pointed out that many of these issues overlap with the categories which the courts regard as non-justiciable.

Finally, a balanced conclusion should have been offered.

A major difficulty with this question was that too many candidates failed to answer the whole question, either discussing solely judicial control or parliamentary control but not both.
Question 5

Discuss the manner in which the law regulates the electoral system of the House of Commons to achieve:

a) Equality between candidates standing for elections; and

b) Equality between voters in terms of parliamentary representation.

This question was statistically 'popular' with candidates. It gave rise to some very good answers but also some which were very poor. Where answers were poor, this was generally caused by a failure to interpret the question correctly and to offer an answer relating to one, but not both, parts of the question.

A good starting point, and one adopted by the best candidates, would have been to explain the constitutional importance of the concept of equality in relation to electoral systems. Candidates should then have turned their attention to each part of the question, allowing sufficient time to cover both parts.

On equality between candidates standing for elections, the main issues for consideration were the size of constituencies and, briefly, the role of the Electoral Commissions in regulating boundaries to ensure a degree of equality in the number of voters per constituency. Also important was the regulation of the election campaign itself: the question of election expenditure (limits, the appointment of an agent, accounting, offences relating to expenditure). At the national level, the control over political parties and recent reforms relating to the registration of donations should have been mentioned, but not discussed in detail.

On equality between voters ‘in terms of parliamentary representation’, the key issue here is the electoral system used for general elections. Candidates should have been able to discuss in detail the merits and demerits of the Simple Majority System and to explain the concept of proportional representation and alternative systems. The recent referendum on whether or not the Alternative Vote should be used for future general elections was mentioned by many. Also relevant to this question is the issue of the franchise, and the best candidates were able to discuss recent reforms (the local connection qualification) and controversial issues such as the disenfranchisement of prisoners highlighted by the 2005 case of Hirst v United Kingdom, to which the government has yet to respond with remedial legislation.

Extracts from scripts

Fail

‘An election is a decision making process by which a population chooses and individual to hold formal offices. This is the procedure which sometimes used in legislature, executive and judiciary. It is also used in many private sections, business sections etc.

An election is a process by people make their decisions to select leader to run their country or state. The House of Commons are too much equal to select candidates standing for elections. Election enable voters to select leaders in there own way.

In the voting system there are some advantages and disadvantages:

Arguments for:
* voting is simple and easy to understand
* calculation process is too easy
* only First past the post (FPTP) win
* people give right decision to select their leaders.
Arguments against:
Big parties win. There are no chance of small parties
Sometime vote can’t count correctly. So therefore, people get fraud leader.
People from all class doesn’t know what is it.
Characteristics of FPTP system: In a big nation only 100,000 people get this system. People who get most vote in the election he is called the winner.’

Next we consider the parliamentary representation of parliamentary voting system:
‘Part 1 of the bill provides that a bill to be held on 5th May 2011”. This bill is called the alternative vote system. Therefore, the people get equal privileges such as self esteem and self restraint.
The step of the parliamentary voting system are discussed below:
Voters may vote their candidates in rank 1, 2, 3 etc.
People who is elected need to get 50% of the votes in the election./
If the candidate get 50% of the votes then he is elected. If no then further round of counting is needed. The candidate of last place is eliminated.
If this time get 50% of the votes then he is elected. If not these step then further round of counting is needed. The candidate of the last place is eliminated. The counting process is running before the candidate has got 50% of the votes.
The new voting system is too helpful for get the real candidate and leaders. But it was too lengthy process and get much time.
In conclusion, the parliamentary voting system is too important to get leader. It is further developed in future.’

Comment
The candidate ignores the first part of the question. The answer to the second part is incomprehensible, the candidate offering random statements about the electoral process with no analysis or discussion. There is no knowledge of the law.

Interpretation of the question: poor
Relevance of the answer to the question: poor
Substantive knowledge: very poor
Use of authorities: very poor
Articulation of argument: very poor
Accuracy of information: very poor
Clarity of expression: poor
Legibility: adequate
Third Class

‘Every country has a Parliament and Ministers does an system which makes the citizens to get involved in their pact. This simply mean the Electoral System, with electoral system each 5 years once there will be an election and where the people or the citizens of the country vote for their favourite leader. Electoral system is a law that was brought up to give a fair ministerial system. Is only know as one voice, one vote.

In the system of electoral, there few points that need to be looked at:

a) The electoral system done to give a fair system
b) Different bodies to take over the Parliament.

To start of with electoral system, the ministers has to be members of the House of Commons. The Ministers need to stand for election for them to take the relevant position of being the Prime Minister. The most and foremost important part is them to know who will be able to stand in the elections. There are certain people that are not allowed to stand in election mainly the members of the civil servants; a) the police officer b) the civil officers c) army.

Besides that anyone can stand for an election. The age to stand for election was being above 21 but with the new law of Election and Constituencies Bill it has been lessen to 18. Those standing for an election are given a lot of advantages as in how are they going to work to get the votes. They can do the work on by doing an assembly and so on to get the attention of the people, but they need to obey certain limitations that are also there. (Green and MT v United Kingdom) (2010)

Citizens or a people in a country plays a major role in the parliamentary by not really putting a lot of effort but it does makes a large difference because without they’re vote and support, can never appoint the best among the best meaning who sits in Parliament well and who can work hard to give better life and environment for the citizen. The person who can vote starts from the age of 21. There was once a case where two students were abroad and not knowing which continent they were belong when the election, the Court held that even though they are in a different they’re names will be there from where they belong. Therefore, it does not matter where everyone is the voting now can be done via post. Who can vote and who can’t vote? Those who can vote are those who are above 21, the peeress and peers cant vote, aliens, and so on.

With the recent election that was done in May 2010, there shows a lot of difference and thus the power of voting of the citizens. In the May 2010, the election results were very different since the election that happen in 1974.

- Conservative 307
- Labour 258
- Liberal democrat 58
- Others 28

With this outrageous result, for the first time since 1974, the Parliament was ‘hung’. This was all because of the voting of the citizens. (wollars v Warricks) (2010). The for Prime Minister Mr Brown was at 10 Downing Street not knowing what to do. With the further deliberation and the idea of matching the votes where (307+58 = 365) where between the Liberal Democrat and Conservative, they came up with a relevant result. Where the Prime Minister
was from the Conservative and Nick Clegg the Deputy Prime Minister from the Liberal Democrat.

After this May 2010, there were a lot of changes that occur, especially under the Election and Constituencies Bill (2010) where it was decided to bring in the AV to the Bill where it gives the citizens the right to vote with the advantages that are available.

This was too brought in May 2011. There were a lot of issues regarding this matter as they were not sure of what will happen if the difference are brought into, therefore it has to be seen in the new amendments if there is going to be changes in the voting system.

With the new laws and the previous, it is sure that both the voters and candidates that are standing for elections has equality under the law.’

Comment
This answer received a bare pass mark. There is no discussion of constituency boundaries and the work of the Electoral Commissions in revising these. Equally there is no discussion of the law relating to elections: the need for an agent, limits on expenditure, broadcasting rules, accounting or challenges to election results. There is nothing on the financing of political parties or the recent reforms. However, the candidate does demonstrate an understanding of the issues behind elections, and her knowledge of recent events is sound.

Interpretation of the question: just sufficient
Relevance of the answer to the question: just sufficient
Substantive knowledge: poor/just sufficient
Use of authorities: poor
Articulation of argument: adequate
Accuracy of information: variable
Clarity of expression: just sufficient but variable
Legibility: adequate

Upper Second
‘The electoral system is key to the democracy of any democratic country. In the UK, to achieve a level-playing field for the candidates and the voters, a number of measures have been put in place. We will discuss in this essay (a) the equality between candidates standing for elections; and (b) equality between voters in terms of parliamentary representation.

1 Equality between candidates standing for elections

1 Control on spending per candidate.

The candidate gives an accurate account of the rules. The remainder of the answer is also structured under headings, beneath which accurate information is given.

2 Control on funding for political parties

3 Broadcasting and Advertisement

4 Constituency
Equality between voters in terms of Parliamentary representation

1 Franchise
2 Election system.'

Comment
This is a well-structured essay. The candidate is knowledgeable and the discussion is lucid. There is no conclusion offered.

Interpretation of the question: sound
Relevance of the answer to the question: sound
Substantive knowledge: sound
Use of authorities: sound
Articulation of argument: sound
Accuracy of information: sound
Clarity of expression: sound
Legibility: excellent

First Class
There were no First Class marks awarded for this question.

Question 6
‘The right to peaceful democratic protest can never be absolute. The right must be subject to conditions laid down by law and must be balanced against the need for public order.’ Discuss.

This question gave rise to the highest proportion of fails on the paper. Very few candidates had any idea what was required and some offered a generalised answer with no reference to the law whatsoever. However, there were a small minority of exceptionally good answers.

One starting point would be to explain why, in a democratic society, the right to peaceful protest is important. It could then be recognised that the exercise of this right often potentially conflicts with the requirements of public order. This then leads to a discussion of the manner in which the law attempts to balance these competing ‘rights’. Concepts such as breach of the peace, obstruction of a police officer in the execution of his/her duties and obstructing the highway are all relevant here and should have been discussed together with the case law.

Central to this discussion is the Public Order Act 1986 which requires that those organising protests should give written notice to the police, who in turn may lay down conditions which must be complied with if the protest is to remain lawful. It could have been noted that exceptionally there is a power to ban a demonstration, but that this is sparingly used.

Brief mention could have been made to the special rules which apply to protests around Parliament: rules which are currently being revised.

With the Human Rights Act 1998 now in force, the right to peaceful protest is governed by both Article 10 (the right to freedom of expression) and Article 11 (freedom of peaceful assembly and association). It should have been noted that both these Articles include a number of grounds on which the right may be restricted in order to effect the correct balance between the exercise of the right and the requirements of public order. The major recent cases such as Laporte and Austin v Commissioner of Police should have been discussed.
Question 7

Explain the key provisions of the Human Rights Act 1998 and, with reference to case law, assess their effectiveness in guaranteeing rights and freedoms in the United Kingdom.

Candidates should begin by explaining the background to the Human Rights Act 1998. This could include the perceived weakness in the domestic protection of rights caused by the traditional approach to rights and freedoms and the ‘problem’ posed by parliamentary sovereignty, and the disadvantages of having to apply to the Court of Human Rights Strasbourg under the European Convention on Human Rights.

A discussion of the Human Rights Act could then be undertaken (see Chapter 15.3 of the subject guide). The question called for a discussion of the ‘key provisions’ of the Act. These are ss.2, 3, 4, 6, 10 and 19. The best candidates were able to cite these provisions and to offer case law which illustrates the judges’ interpretation of the sections (particularly ss.2, 3, 4 and 6). The best candidates also demonstrated good understanding of the manner in which the courts – as public bodies – have extended the law (particularly in relation to privacy) to cover private rather than public bodies (on this see Textbook, eighth edition, p.546 and Chapter 20, pp.571–579; ninth edition, pp.426–433; Chapter 20, pp.456–461).

Case law illustrating the effectiveness of the Act should have been offered (see Klug, F. and K. Starmer, Standing Back from the Human Rights Act: how effective is it five years on? in the Study Pack at p.209, and Lord Irvine, Constitutional Reform and a Bill of Rights in the Study Pack at p.227).

The question did not require a discussion of further reform, although many good candidates were able to discuss the proposal that Britain should adopt a Bill of Rights to supplement the European Convention on Human Rights.

Extracts from scripts

Fail

‘Human Rights Act 1998 give the further effects to rights and freedoms guaranteed under the European Convention on Human Rights, to make the provision with respect to holders of judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

The convention rights:

(1) In this Act the convention rights means the rights and fundamental freedoms set out.

(2) Articles are to have effect

(6) No amendment may be made by an order.

Interpretation of convention right.

Interpretation of legislation.

Declaration of incompatibility.

Right of Crown to intervene

Acts of public authorities.

Proceedings.

Judicial remedies.
Judicial acts.
Power to take remedial action.
Safeguard for existing human rights.
Freedom of expression.
Freedom of thought, conscience and religion.
Derogations
Reservations.
Period fore which designation derogations have effect.
Statement of compatibility.
Orders etc.’

Comment
The candidate makes no attempt to answer the question: simply providing a list of statutory provisions without analysis, discussion or explanation.

Interpretation of the question: very poor
Relevance of the answer to the question: very poor
Substantive knowledge: very poor
Use of authorities: very poor
Articulation of argument: very poor
Accuracy of information: very poor
Clarity of expression: poor
Legibility: adequate

Third Class
‘Traditional, there is no written guaranteed positive right in the United Kingdom, individual enjoyed doing whatever which is not limited by or prohibited by law. As Dicey mentioned in “Introduction of Study to Constitution Law” the rights enjoyed by individuals are negative liberty.

“Establishment of the Council of Europe after the war in 1949, the United Kingdom was one of the signatory who ratified the European Convention on Human Rights (ECHR). Citizen in the UK has since be protected by the rights contained in the Articles, but it is practically inefficient for an individual to take an action against the state for the violation of rights in the Articles. Because they have to travel to Strasbourg within a limited range of time.’

The candidate discusses the introduction of the Human Rights Act. He or she discusses section 3 and 4 of the Act, using R v A and Ghaiden v Godin-Mendoza to illustrate their application. Section 6 is then discussed with Douglas v Hello! being used to illustrate horizontal effect. The candidate also discusses remedies and derogation.
The candidate concludes as follows:

‘It cannot be said that HRA entirely provides or guaranteed rights and freedoms in UK, since the Govt tends to hide under the blanket of "national security". But overall, the HRA give a cause of action for litigation which acts parrell with Common law.’

Comment

The candidate covers most of the salient aspects of the Human Rights Act, and is able to use the case law effectively. What pulls the mark down here is poor expression in many places.

Interpretation of the question: adequate
Relevance of the answer to the question: adequate
Substantive knowledge: adequate
Use of authorities: adequate
Articulation of argument: just sufficient
Accuracy of information: just sufficient
Clarity of expression: poor
Legibility: poor

Lower Second

‘The European Convention on Human Rights (ECHR) was established on 1950 (November) in Rome and come into enforce on 3rd September 1953. It was set out to ensure the rights and freedoms of the individuals. The Human Rights Act incorporated the part of Convention law in the domestic law and it come into enforce on 2000 in the UK.’

The candidate then discussed section 3 and 4 of the Act, however the discussion is marred by poor expression, as the following passage reveals:

‘In this Act s.3 provides that the judges can interpreted the domestic law with compibty the conventional law. In s.4 of HRA 1998 suggest the judges to privilled the conventional law over the domestic law, if there have any conflict between the convention law and the domestic law then the judges can dicl ear the incomabitity. But they cannot flow the domestic law. The Human Rights Act have a vardicall effect not horizontal…’

The candidate then discusses remedies and amendment of the law and recognises the advantages offered by the Act.

The candidate then considers the disadvantages of the Act, in the course of which he or she makes a serious error:

‘The UK has an unwritten constitution, but the HRA is an written form of the constitution. So it makje them rigide. The HRA also a threat to the sovereigntiy of parliament it curtailed the supremacy of the parliament because if any domestic law conflict with the HRA then the domestic law will be invalid.’

The candidate concludes:

‘So from the above discussion it can be considered that, the HRA have a great effect upon the UK legal system. If all the problems are not solved by the Act but more of them had been solved and it ensure the constitutional guarantee of citizens.’
Comment
There are many good points made in this answer, although the Examiners are forced at times to try and interpret what the candidate is trying to say. There are also errors, and the expression is poor in part and the spelling very poor.

Interpretation of the question: acceptable
Relevance of the answer to the question: acceptable
Substantive knowledge: just sufficient
Use of authorities: poor
Articulation of argument: just sufficient
Accuracy of information: poor in part
Clarity of expression: poor
Legibility: acceptable

Upper Second
"In 1998, the birth of the Human Rights Act (HRA) was very much welcomed in the United Kingdom (UK) whereby citizens of UK no longer had to travel all the way to the European Court of Human Rights (ECHR) to seek for their rights. S3 of the HRA provides that so far as it is possible, domestic law in UK must be interpreted in a manner that is compatible with the Convention rights.

“Lord Steyn said that the carefully and subtly drafted HRA preserves the doctrine of parliamentary sovereignty. The HRA therefore aims at striking a balance between preserving parliamentary sovereignty and making sure that the citizens of the country are not denied of their rights.’

The candidate then discusses the Gender Recognition Act, declarations of incompatibility and problem posed by suspected terrorists as revealed in A v Secretary of State for the Home Department. There is also a discussion of criticism of the Human Rights Act and political calls for its reform.

Comment
This is an articulate, confident and knowledgeable answer showing in depth understanding of the impact of the Act, its advantages and its alleged disadvantages. The answer is well written and there is a balanced conclusion offered.

Interpretation of the question: sound
Relevance of the answer to the question: sound
Substantive knowledge: sound
Use of authorities: sound
Articulation of argument: sound
Accuracy of information: sound
Clarity of expression: sound
Legibility: sound
First Class

‘The Human Rights Act 1998 incorporates the European Convention of Human Rights into UK law and many have argued that this Act had been successful in improving the protection of rights and freedoms in the UK. Vernon Bogdanor, in his book the New Constitution have even called it the “cornerstone of the new constitution”.

‘As the UK does not have a written constitution it adopts in its place parliamentary sovereignty and as Parliament is sovereign, there cannot be fundamental rights/laws that Parliament cannot change. Thus, as Lord Lester noted in his article The Human Rights and British Constitution, there can be no absolute guarantee of rights in the UK.’

The candidate then offers a detailed discussion of section 2, with a good use of case law. Section 3 is then discussed, noting the limits on interpretation. Declarations of incompatibility are then considered, again with a good use of case law. Section 6 is considered, noting the lack of a clear definition of public authorities, but also discussing horizontal effect. Finally, the candidate considers section 8 and its weakness.

The candidate concludes:

‘To conclude, the HRA is an important Act which sets out to improve the protection of rights and freedoms, but due to the adherence to parliamentary sovereignty, arguably it cannot provide effective guarantee as a Bill of Rights may do. Yet, before the enactment of a Bill of Rights, as Lord Lester and David Pannick QC has noted, the HRA did improve and change the law of the UK substantially in many aspects and its effectiveness should not be dismissed lightly.’

Comment

This is an excellent answer, well structured and argued with an excellent use of authorities. The candidate displays an in depth knowledge of the Act and a clear understanding of its advantages and limitations.

Interpretation of the question: excellent
Relevance of the answer to the question: excellent
Substantive knowledge: excellent
Use of authorities: excellent
Articulation of argument: excellent
Accuracy of information: excellent
Clarity of expression: excellent
Legibility: excellent
Question 8

‘… the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individual depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.’ (Lord Bridge, *Lloyd v McMahon* (1987)).

Discuss, making reference to case law.

Candidates should have begun discussion by introducing the role and function, and constitutional importance, of judicial review of administrative action. It would then have been useful to explain, briefly, the major headings of judicial review (*per* Lord Diplock in *Council for Civil Service Unions v Minister for Civil Service* (1985)).

The discussion should then turn directly to the rules of natural justice (see Chapter 18.3.3. of the subject guide) and the two principal rules: the right to a fair hearing (*audi alteram partem*) and the absence of bias (*nemo iudex in causa sua*).

The right to a fair hearing, in particular, gives rise to many different requirements, any of which will apply in any given case depending on the circumstances and the requirements of fairness overall, as interpreted by the judges and as explained by Lord Bridge’s quote from *Lloyd v McMahon*.

The absence of bias should also have been discussed. Relevant here are the rules which regulate whether or not a judge may preside over a case (*Dimes; McCarthy; Pinochet*). Doubts as to the correct test to apply to ‘bias’ should also be discussed, albeit briefly (*Gough; Porter v Magill*).

The rules of natural justice also apply to situations in which a person or persons are given assurances which create a legitimate expectation as to how they will be treated. Relevant cases here include the Liverpool Taxi case; *Ng Yuen Shiu; Coughlan*.

Many candidates rightly pointed out that Article 6 of the European Convention on Human Rights, incorporated under the Human Rights Act 1998, now provides the explicit right to a fair trial, supplementing the common law requirements. There is a wealth of case law under Article 6. However, given that many candidates will have studied this Article in depth in *Common law reasoning and institutions*, care should be taken not to over emphasise Article 6 in relation to this question on natural justice.