THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS

PUBLIC LAW

Thursday 29 July 2021

0900 – 1200
(Three hours)

Candidates should answer THREE questions ONLY
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Question 1

In the *Miller* case the UK Supreme Court said that Brexit would involve as “fundamental” a change in the United Kingdom’s constitutional arrangements as joining the European Community in 1973. What has that change involved?

Question 2

The UK Government has established an independent review of how the Human Rights Act 1998 is operating in practice and whether any change is needed.

What changes did the Human Rights Act make in the protection of human rights in UK domestic law? Is any change in your view needed?

Question 3

“Holding the executive government accountable has become the dominant function of all modern legislatures.” By what means does the Scottish Parliament seek to hold executive government accountable and how effective is it in doing so?

Question 4

“The petitioner’s case fails to appreciate the limitations under which the court operates when asked to review the decision of a specialist tribunal such as the respondents. As the Lord Ordinary correctly reasoned, the task of forming a view on whether a miscarriage of justice may have occurred …has been entrusted by Parliament to the respondents. There is no statutory appeal process. The respondents’ determinations are therefore susceptible to review by the court, but only on conventional grounds of illegality.” (Lord Carloway).

Explain the background to this statement. What are the ‘conventional grounds of illegality’?
Question 5

The Lord Advocate is the head of the systems of criminal prosecutions and investigations of deaths in Scotland. She is also the Scottish Government’s most senior legal adviser. Following the Alex Salmond Affair there have been calls for the roles to be split. Should they in your view be split? Do you foresee any difficulties as a result of doing so? Would such a change require legislation and, if so, by which Parliament?

Question 6

What part does the ombudsman device play in the redress of individual grievances against government in Scotland? What are the advantages and disadvantages of ombudsmen when compared with those of the courts? Should the role of the ombudsman in the redress of grievances against government in Scotland in your view be increased? If so, in what respects?

END OF QUESTION PAPER