

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PUBLIC LAW AND THE LEGAL SYSTEM

AUGUST 2009

(Three hours)

**Candidates are required to answer FIVE questions ONLY.
Wherever relevant, citation of legal authority is expected.**

1. Lord Reid in 1972 commented as follows:

‘There was a time when it was thought almost indecent to suggest that judges make law – they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdin’s cave there is hidden the Common Law in all its splendour and that on a judge’s appointment there descends on him knowledge of the magic words Open Sesame. Bad decisions are given when the judge has muddled the password and the wrong door opens. But we do not believe in fairy tales any more.

Should we continue at least to try to believe in such ‘fairy tales’?

2. Examine the status and function of the new Supreme Court in the Scottish legal system. What advantages, if any, will the introduction of such a body have over present arrangements?
3. How is an independent and impartial judiciary secured in the Scottish legal system?
4. What do you understand by prerogative power? What is the relationship between statute and the prerogative? What constraints are there on the exercise of prerogative powers?
5. Critically assess the principal conclusions of the recent Calman Report on the future of Scottish devolution.
6. Do the arrangements for ministerial responsibility and parliamentary scrutiny of the Scottish Executive represent any improvement on the arrangements at Westminster?

7. Ten years on, do you feel that the concerns of sceptics as to the impact of the European Convention on Human Rights on Scots law and the legal system have proved entirely groundless?

8. What is meant by 'procedural fairness' in Scots administrative law?

9. Critically assess the following assertion:

"The basic problem – which is particularly acute in the area of discretionary decision-making – is the difficulty for the courts in maintaining the distinction between the legality and the merits of decisions. Judicial review is not the same as appeal and therefore courts may not substitute their views on the merits of decisions for those of the primary decision-makers. It might be thought that this completely precludes the possibility of the courts reviewing discretionary decisions; so long as a decision-maker has complied with the letter of his or her statutory powers, everything else is a question of merits. Such an approach would, however, run a serious risk of exempting vast swathes of administrative decisions from control by the courts, with no possibility of individuals being able to seek redress if such powers are abused."

10. What part do ombudsmen play in the resolution of disputes between citizens and the State?

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