

Question 1 (Alexander): 20 Points – 20%	20 Points
Limits of Parliamentary Sovereignty	
<p>As background to the answer a discussion of Parliamentary sovereignty and some of the principles governing its operation and its foundational role in the UK legal system. General idea is that Parliament is sovereign and can enact legislation to modify existing principles of common law. But a tension arises with whether parliament can enact legislation that modify fundamental principles of common law (ie., trial by jury) and if so limits may still apply because the courts interpret the statutes in the context of the pre-existing common law.</p>	1
<p>The primacy or sovereignty of parliament and its capacity to enact primary legislation with assent of the Crown to create law and to modify the existing common law.</p>	1
<p>Limits Parliament legislation needs the Queen’s (Royal) Assent before becoming legally effective</p>	1
<p>Another limitation on Parliament – where Parliament has not enacted legislation in contradiction, the Crown through Royal Prerogative can make decisions to direct Government Ministers in certain areas, such as conduct of foreign policy.</p>	1
<p>Crown’s ministers conduct foreign policy and enter into treaties on behalf of the Crown. Although this is a limit, parliament must adopt domestic legislation to give legal effect to Treaties. Example of European Communities Act of 1972 giving legal recognition to UK government becoming a signatory to the EU Treaties.</p>	1-2
<p>Courts interpret statutes and apply different canons of interpreting what Parliament has enacted. Discuss whether gives courts more power and limits parliament. Parliament statute however can only be interpreted by the courts, which can apply common law techniques of interpretation to a statute that might give it a meaning that Parliament did not foresee. Depending on the interpretative technique used, plain meaning of the text, or purposive interpretation, or absurd result approach. Not to describe the these interpretative techniques.</p>	1 1-2
<p>Discuss the weaknesses of UK constitutional law – no written constitution, but precedent of court decisions interpreting the scope of Royal Prerogative and division of powers between Prime Minister (acting for Crown) and Parliament.</p>	2-3
<p>No accessible documentation or statutes that divide or allocate powers between Crown/PM/Ministers, Parliament and the courts. Unlike European constitutional democracies</p>	1-2
<p>The role of referendum and the ‘people’s vote’ as limit on Parliamentary sovereignty. UK not has experience referendums/initiatives. How to reconcile with Parliamentary sovereignty. However Parliament enacted legislation to allow Brexit referendum</p>	1 2

Also, discuss importance of courts (Judges v Crown/Queen in Parliament’ – the rule of law and other judicially develop concepts that might override parliamentary sovereignty. European Convention on Human Rights explicitly requires clarity in statutory provisions, in support of rule of law, legality and due process. Any or all of these principles could be mentioned.	1-2
EU law constrains Parliamentary sovereignty. But Parliament adopted legislation accepting EU law as part of UK law.	2 EC
Discuss the importance of Parliament statute-making – but with the backdrop of common law principles. Contributory negligence at common law and comparative negligence by statute.	1-2
No accessible documentation or statutes that divide or allocate powers between Crown/PM/Ministers, Parliament and the courts. Unlike European constitutional democracies. Decision-making responsibilities between Government (Cabinet) and Parliament and the Crown influenced by custom or convention.	2-3
<ul style="list-style-type: none"> • European Convention on Human Rights may constrain Parliamentary sovereignty. But Parliament enacts Human Rights Act 1998 in order to get judicial review from UK courts. 	1
<ul style="list-style-type: none"> • The Human Rights Act Declaration of incompatibility by the courts. But legislation declared incompatible still valid and operative, but the declaration <i>allows</i> Parliament to <i>consider</i> changing it – without any legal obligation to do so. 	2
In Brexit case, UK supreme court asserts judicial review to interpret the law and tell the Prime Minister that he cannot prorogue Parliament for an unjust reason. Balanced discussion of the facts as described in lecture and readings	1
Critically discuss the relevant principles and concepts from the lectures and readings, giving particular attention to the merits and faults of the UK legal system. Suggest ways to improve, including comparison with other types legal systems.	1
Parliamentary sovereignty may neglect fundamental rights (eg., human rights) but Parliament has enacted a Human Rights Act 1998.	2 EC
Parliament sovereignty and Brexit referendum – people’s vote. Pro or con against Parliamentary sovereignty	1 EC
Total Question 1	20

Question 2 (Alexander): 35 Points – 35%	35 Points
Question 2 – Hypothetical involving Defendant Alan Ryan of UNOCAL corporation convicted of fraud	

<p>a) Judge deciding petition to erase conviction</p>	
<p>Doctrine of abatement – death of defendant while criminal conviction on appeal abates the conviction and no criminal record of conviction because appeal not exhausted while Defendant died. This abates the conviction. cite Aaron Hernandez case – discussion. Common law principle</p>	2-3
<p>Hernandez was convicted of murder and in prison awaiting appeal of his conviction before he died of apparent suicide. Massachusetts weighed importance of abatement against other principles – victims rights - family members having rights to see conviction stand; suicide is illegal under Massachusetts law; intention of defendant to thwart justice. Courts engages in weighing and balancing other common law principles against principle of abatement.</p>	1
<p>Elements of a crime – Bad act - Actus reus, and mental intent or culpable mind</p>	1
<p>Ryan case – weighing and balancing of principle of abatement as in Hernandez case. Ryan convicted of fraud/embezzlement in March 2019 of stealing money from UNOCAL employee pension fund and misrepresenting to UNOCAL’s investors about financial soundness of company. A few months before conviction deposits stolen money with CS bank.</p>	1 EC
<p>Ryan travels to Abscondia and commits suicide (illegally). Lawyer files petition to abate conviction while on appeal because of his appeal.</p>	1
<p>Principle of abatement clashes with public policy opposing suicide in Abscondia. Weighing and balancing of interests.</p>	2
<p>Claims of investors and former employees – weighing and balancing their interests to see that justice is done. A criminal has a conviction for his crime. Similar to court’s weighing and balancing of interests in Hernandez case. Not sure why Ryan committed suicide or whether or not he did commit suicide (‘apparently’ committed suicide).</p>	2
<p>Other common law principles implicated – weighing and balancing of investors and employees economic losses because of criminal conduct deserve a conviction so that criminal law can ensure some restitution. Interests to see that conviction stands to support their recovery of lost proceeds</p>	2
<p>Discussion of Ryan’s commission of fraud and embezzlement on the ground that he knowingly committed fraud, theft and acted dishonestly.</p>	2

<p>b) Investor and former Employees Claims against CS Bank - Equitable claims</p>	<p>1 EC</p>
<p>Constructive Trust</p>	
<p>Elements of Constructive Trust – third party (ie., bank) can become Trustee constructively without expressly agreeing to do so if they should have known that property in question (money or valuables) belonged to someone else and did not take steps to inquire as to illicit origins of money/property</p>	<p>1 EC</p>
<p>Bank’s role as knowing facilitator of fraud or knowing assistance Difficult to prove in this case because not clear if bank should have known that it was holding illicit deposited proceeds on Ryan. Depends on facts (not discussed in question) of whether Ryan prosecution was publicly known.</p>	<p>2 EC</p>
<p>Investor and employee claims based on Fraud Act 2006 – 3 classifications of fraud</p> <p>1) Fraud by false representation, 2) fraud by failure to disclose information if under duty to do so, and 3) fraud by abuse of position.</p>	<p>1-2 EC</p>
<p>Discuss facts of case involving Ryan defendant knowingly transferring money having been president of company, and he failed to disclose information to investors.</p>	<p>1-2</p>
<p>Extra credit points for common law misrepresentation</p> <p>2) Misrepresentation is a false statement of fact or law by the representor which induces the representee to enter into the contract</p>	<p>1</p>
<p>3 types of misrepresentation 1) Innocent, 2) Fraudulent, or 3) Negligent</p> <ul style="list-style-type: none"> • Remedy usually rescission or damages 	<p>1-2</p>
<ul style="list-style-type: none"> • Requirements: <ul style="list-style-type: none"> • False statement of fact or law, not opinion • Inducement / reliance 	<p>1</p>
<p>Extra credit – as a matter of the law of equity, unjust enrichment would require that A provide restitution (refund the £1 million), but not with damages, as equitable remedy of restitution for unjust enrichment only leads to compensation for claimant – this case return of the £1 million plus interest.</p>	<p>1</p>
<p>Piercing the corporate veil to sue Ryan directly for fraud and misrepresentation in inducing them to invest in UNOCAL company: Voidable effect – investment contract exists but may be set aside (avoided) by the investors if they show fraud to investors or employees</p>	<p>1-2 EC</p>

<p>Damages claim could result in claim against Ryan’s estate for return of the illicit proceeds deposited in CS Bank plus costs and related damages, such as consequential (ie. loss of expectations) damages, possibly punitive damages</p>	1-2
<p>Other Remedy: Equitable remedy of rescission: unmaking of the contract to bring the parties back into the position they were in before entering the contract. But who pays? Ryan died and corporation in bankruptcy</p>	1-2
<p>Claim against UNOCAL company unlikely to be successful because of company in bankruptcy.</p>	1
<p>Related criminal law violations that might serve as a basis for investor/employee recovery. Theft Act 1968</p> <p>1) Must be property physical or immaterial; 2) property belonged to someone else; 3) accused took the property (de facto ownership)(actus reus), and (4) accused did so unlawfully (no justification), and 5) dishonestly</p>	1-2
Total Question 2	35

Question 3 (Fiocchi Malaspina): 25 Points – 25 %	25 Points
<p>Property Law: illustrate the differences between Common Law and Civil Law, trace the historical development and discuss the concept of property</p> <ul style="list-style-type: none"> • Common Law/Civil Law: sources of law, role of the judges, main differences between the two systems. Then Common Law and Civil Law on property: Declaration of the Rights of Man and the Citizen/Code Napoleon (concept of property: “the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations”). • Concept of property/ownership and possession (Property: «all rights which are capable of being transferred to others»; Ownership: «it is a right or an aggregate of rights», person who has those rights of use and enjoyment, of destruction, and of disposition; Possession: «primarily a matter of fact», two elements: some actual power of control over the thing possessed; some intention necessary to maintain that control on the part of the possessor. Estate: «An estate is a portion of the ownership of the land, more or less in a limited time»; Life estate (lifetime) Equivalent to ownership (full rights of possession and enjoyment); Fee simple; Intermediate between life estate and fee simple; Estate tail «Tenant in tail has full rights of possession and enjoyment without regard to waste. It passes to his heirs, but only to his descendants». • Tenure. Medieval period it was very significant legal commonplace that full ownership of land was possible for no person save the King; «Landowners were regarded as ‘holding’ their land, by various forms of ‘tenure’, of the King»; Tenure by knight service 	<p>3</p> <p>6</p> <p>3</p>

<ul style="list-style-type: none"> • Quia Emptores 1290 – “Because of the Buyers”: To prevent tenants from alienating their lands to others by subinfeudation, instead requiring all tenants who wished to alienate their land to do so by substitution. Allowed tenants to sell their interests to other third parties more easily. Facilitated a more rapid decline of feudal tenure rights. 	3
<ul style="list-style-type: none"> • Statute of Tenures 1660: All free tenures were converted into socage; socage = “form of land tenure in which the tenant lived on his lord’s land and in return rendered to the lord a certain agricultural service or money rent”; 1660 marked the end of feudalism in its political aspect. 	2
<ul style="list-style-type: none"> • Property Act 1925: Property divided into two categories: Real property: «it was recoverable specifically by a real action» (included most of the interests recognised by the law); Personal property (chattels real) = interests in land for a term of years (leaseholds), contractual rights; Chattels personal consist either of tangible goods, or of intangible rights as patents, stocks or shares 	3
<ul style="list-style-type: none"> • Land Registration Act 1925 Provision was established for the registration of interests; The owner of the equitable interest had to register = it constitutes actual notice of such interests 	1
<ul style="list-style-type: none"> • Land Registration Act 2002 	2
<ul style="list-style-type: none"> • Property law v contract law: Property rights are rights over things enforceable against all other persons (rights <i>in rem</i> = against the thing itself); By contrast, contractual rights are rights enforceable against specific persons (rights <i>in personam</i> = against the person); Property rights may, however, arise from a contract; the two systems of rights overlap; For example, sale of land involves two sets of legal relationships: the contractual right to sue for damages, and the property right exercisable over the land. 	2
<ul style="list-style-type: none"> • Extra points: detailed description of the differences between Common and Civil Law: Hobbes and Locke on property; Blackstone on property 	+ 4
Total Question 3	25

Question 4 (Alexander): 20 Points – 20%	20 Points
Discuss international law in UK legal system. Did the UK membership in EU represent primacy of international law over domestic law? What about Brexit?	
Discuss monism and dualism – differences and how dualism applies in UK	2-3
Customary international law, treaties, and general principles of law.	2
Crown’s ministers negotiate treaties on behalf of the Crown/State, but parliament must enact implementing legislation to give effect to treaties.	1

<p>International human rights norms – UN Convention and European Convention on Human Rights 1950 (UK signatory) but not implement into domestic legislation until Human Rights Act 1998.</p>	<p>2</p>
<ul style="list-style-type: none"> • European Convention on Human Rights, UK signed 1950, ratified 1951, in effect since 1953. UK implementation is important example of dualist approach. • 	<p>1</p>
<p>Significant articles: Articles 5, 6 and 7 promote crucial requirements of the rule of law: they prohibit arbitrary executive detention, require fair procedures in the determination of criminal charges and civil rights, and prohibit retrospective criminal penalties.</p>	<p>1</p>
<ul style="list-style-type: none"> • The Human Rights Act makes it unlawful for UK public authorities to act in a way that contravenes <i>certain</i> rights guaranteed in the Convention and gives the individual standing to sue the authority in a UK court. 	<p>1</p>
<ul style="list-style-type: none"> • S. 3 HRA requires legislation to be given effect in a way that is compatible with the ECHR. If it cannot be interpreted that way, the court will make a “declaration of incompatibility” (s.4 HRA) – rarely used. 	<p>1</p>
<ul style="list-style-type: none"> • Parliamentary sovereignty: freedom to leave the Convention. But while still in, must obey. 	<p>1</p>
<p>Prisoners’ right to vote case: almost 10 cases, judgment always against the UK, putting off change. So when parliament does not want to implement a commitment as interpreted by the ECHR then it can delay and even ignore implementation</p>	<p>1</p>
<p>Does Brexit have significance for role of international law in UK law?</p>	<p>1</p>
<p>Discuss dualist system in which Parliament decided to hold a referendum, and then for Prime Minister to give notice to EU Commission, but UK courts said that this was legally inadequate and that Parliament must vote to give notice to authorise the PM to begin withdrawal process. give notice of Brexit – 1st through Prime Minister writing a letter to EU Commission</p>	<p>1-2</p>
<p>Parliament/the Crown and the EU – how affect Brexit affects international law obligations, particularly to EU.</p>	<p>1</p>
<p>EU law – Directives, Regulations and EU Treaties.</p>	<p>2</p>
<p>Discussion of European Convention on Human Rights (not affected by Brexit) but relevant because it is ultimately interpreted/decided by ECHR (not UK courts). Sovereignty of EU law over UK law?</p>	<p>1</p>
<p>Does it undermine the idea of Parliamentary Sovereignty? Parliament having an internal fight with the Prime Minister/Cabinet (Ministers of the Crown)</p>	<p>2</p>
<p>Total Question 4</p>	<p>20</p>
<p>Total Points</p>	<p></p>