

**ADVANCED SUBSIDIARY GCE UNIT
LAW**

G142

Sources of Law

MONDAY 11 JUNE 2007

Morning

Time: 1 hour

Additional materials: Answer Booklet (8 pages)



INSTRUCTIONS TO CANDIDATES

- Write your name, Centre number and candidate number in the spaces provided on the answer booklet.
- Answer **one** question.
- Read each question carefully and make sure you know what you have to do before starting your answer.
- If you use additional sheets of paper, fasten these securely to the answer booklet.
- Write the number of the question you answer on the front of your answer booklet.

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is **60**.
- Candidates are reminded of the need to write in continuous prose, where appropriate. You will be assessed on the quality of your written communication and your use of appropriate legal terminology (QWC).

This document consists of **6** printed pages and **2** blank pages.

Answer **one** question.

- 1 Read the source material below and answer parts **1(a)** to **1(c)** which follow.

Exercise on Legislation and Delegated Legislation

Source A

Parliament consists of three distinct elements: the House of Commons, the House of Lords and the Queen. Before any Bill can become an Act of Parliament, it must proceed through and be approved by both Houses of Parliament and must receive Royal Assent.

Source B

In order to reduce pressure on parliamentary time, some Acts of Parliament often known as enabling (parent) Acts, give government ministers or other authorities the power to regulate administrative details by means of 'delegated' or secondary legislation.

Delegated legislation mostly takes the form of Orders in Council, Statutory Instruments (SIs) and also Bylaws made by local authorities for local issues.

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These are as much the law of the land as are Acts of Parliament. SIs are normally drafted by the legal department of the ministry concerned and may be subject, when in draft, to consultations with interested parties. About 3,000 SIs are issued each year.

To minimise any risk that delegating powers to Government bodies (e.g. Ministers and local authorities) might undermine the authority of Parliament, such powers are normally only delegated to authorities directly accountable to Parliament.

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The enabling Acts concerned, sometimes provide for some measure of direct parliamentary control over proposed delegated legislation, by giving Parliament the opportunity to affirm or annul it.

Parliament always has the right to consider whether the SI is made in accordance with the powers that it delegated.

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The courts can also control delegated legislation through the process of judicial review.

Adapted from *www.news.bbc.co.uk*

Answer **all** parts.

- (a) **Source A** at lines 2–3 refers to making an Act of Parliament.

Describe how an Act of Parliament is created. [12]

- (b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations.

(i) A national emergency such as an outbreak of war involving the U.K. [5]

(ii) Where an enabling Act authorizes the issuing of regulations concerning police powers. [5]

(iii) The local imposition of penalties for dogs fouling footpaths. [5]

- (c) With reference to **Source B**:

(i) describe the controls on delegated legislation; [15]

(ii) discuss the effectiveness of the controls of delegated legislation. [12]

QWC [6]

Total marks [60]

2 Read the source material below and answer parts 2(a) to 2(c) which follow.

Exercise on Judicial Precedent

Source

Lord Denning carried on a one-man campaign to secure a change of practice in the Court of Appeal. The attack was on two fronts. First, he asserted that the Court of Appeal was no longer bound by the decisions of the House of Lords. Second, he claimed that the Court of Appeal was no longer bound to follow its own decisions as a general rule, and not just in the exceptional circumstances laid down in *Young v Bristol Aeroplane* [1944]. These exceptions are:

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- 1) Where its own previous decisions conflict, the Court of Appeal must decide which to follow and which to reject.
- 2) The Court of Appeal must follow a later decision of the House of Lords if its own previous decision conflicts with it.
- 3) The Court of Appeal need not follow its own previous decision if it were made *per incuriam* (in error).

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Lord Denning's views were based on the Practice Statement itself, which, he alleged, had transformed the *stare decisis* (doctrine of precedent) principle in the Court of Appeal as well as the House of Lords. But this approach ignored the closing words of the Practice Statement that it was not intended to affect the use of precedent anywhere other than in the House of Lords.

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Adapted from *The English Legal Process*, Terence Ingham

Answer **all** parts.

- (a) Using the **Source** and other cases, describe the powers of the Court of Appeal. [12]
- (b) Consider each of the following situations and explain whether or not the Court of Appeal can depart from the previous decision.
- (i) A case concerning a death resulting from medical negligence was heard by the Court of Appeal (Civil Division). A year later, a similar issue is being heard by the Court of Appeal (Criminal Division). [5]
 - (ii) A case concerning breach of contract was decided by the Court of Appeal (Civil Division). Days later a similar issue is heard by the same court but the judges now feel that the decision should be different. [5]
 - (iii) A case concerning murder was decided by the House of Lords. The Court of Appeal (Criminal Division) believes the decision of the House of Lords is out of date. [5]
- (c) (i) The **Source** at line 13 refers to *stare decisis*.
Describe the concept of *stare decisis* using the source and cases to illustrate your answer. [15]
- (ii) Discuss whether or not the powers of the Court of Appeal within the doctrine of precedent, should be extended. [12]

QWC [6]

Total mark [60]

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