

Tuesday 2 June 2015 – Afternoon

AS GCE LAW

G152/01 Sources of Law

Candidates answer on the Answer Booklet.

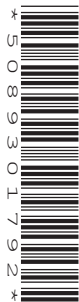
OCR supplied materials:

- 12 page Answer Booklet (OCR12)
(sent with general stationery)

Other materials required:

None

Duration: 1 hour



INSTRUCTIONS TO CANDIDATES

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Use black ink. HB pencil may be used for graphs and diagrams only.
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- Write your answer to each question on the lined pages in the Answer Booklet. The question numbers **must** be clearly shown.
- Answer **one** question; either Question 1 (all parts) **or** Question 2 (all parts).
- Do **not** write in the bar codes.

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 legibly and in continuous prose, where appropriate. In answering part **(a)** and part **(c)(ii)** questions you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (*).
- This document consists of **8** pages. Any blank pages are indicated.

INSTRUCTION TO EXAMS OFFICER/INVIGILATOR

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Answer either Question 1(a) to 1(c) or Question 2(a) to 2(c).

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

Exercise on Legislation and Statutory Interpretation

Source A

Section 4 of the Road Traffic Act 1988 is intended to target people found in charge of motor vehicles while they have taken substances which mean they cannot properly control their vehicle:

4. Driving, or being in charge, when under [the] influence of drink or drugs

- (1) A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence.

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The Road Traffic Act 1988 is to be amended by the Deregulation Bill. Line by line examination of the Bill took place during the eighth and last day of the committee stage on 20th November 2014.

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Road Traffic Act 1988 (quoted from legislation.gov.uk <http://www.legislation.gov.uk/ukpga/1988/52/section/4>)

Source B

When we turn from the literal rule to the golden rule, we find that this rule sets a purely negative standard by reference to absurdity, inconsistency or inconvenience, but provides no clear means to test the existence of these characteristics or to measure their quality or extent. When a court decides that a particular construction is absurd, it implies ... that the construction is absurd because it is irreconcilable with the general policy of the legislature. Thus in *R v Oakes* (where the Court read 'aids and abets and does any act preparatory to the commission of an offence' in s.7 of the Official Secrets Act 1920 as 'aids and abets or does any act preparatory to the commission of an offence') the underlying assumption was that the Act was framed to fit in with the general pattern of the criminal law.

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Law Commission Report on Interpretation of Statutes (1969), Law Com. No.21, published by HMSO 256

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Answer **all** parts.

1 (a)* **Source A** refers to the committee stage.

Describe the committee stage and the processes that come before and after it when making an Act of Parliament, including the pre-legislative process. [15]

(b) Explain whether each of the following individuals will be guilty under Section 4 of the Road Traffic Act 1988 using **all** of the rules of statutory interpretation:

(i) Bonnie is stopped by the police because she is driving her car in a dangerous manner. Bonnie admits she is feeling a bit weird but insists she is not breaking any law as she has taken a so-called 'legal high'. [5]

(ii) Andrew is stopped by the police while trying to start his car in a pub car park. Andrew admits to having drunk a lot of whisky. He is breathalysed and found to be four times over the legal limit. [5]

(iii) Craig is involved in a road traffic collision while driving his motorbike. It is Craig's fault because he has worked a 36-hour shift and is exhausted. A roadside test confirms that he is not intoxicated through drink or drugs. [5]

(c) (i) **Source B** refers to both the golden and literal rules.

Describe the golden rule and how it is different to the literal rule. [15]

(ii)* **Source B** also refers to the problem that there is no clarity on when to use the golden rule.

Discuss this problem **and** other advantages **and** disadvantages of using the golden rule. [15]

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

Exercise on European Union (EU) Law

Source A

Much EU legislation is said to have 'direct effect' in the sense that it creates rights and duties in domestic law without intermediate national legislation. The treaties are not just agreements between nation states but create a legal order in which individual citizens have rights and duties against those member states. The current test is that the provision of EU law must be (a) clear and unambiguous, (b) unconditional, and (c) not dependent on further action being taken by the Community or national authorities.

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Direct effect can take two forms. Vertical direct effect creates rights only between an individual and a member state. Directives will not have horizontal direct effect until they are implemented as part of national legislation, but they may have effect between a citizen and the state or its organs. ... Horizontal direct effect creates rights between individual European Community (EC) residents. Regulations almost invariably fit into this category. Many provisions of the treaties also do.

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Even if an EC legal rule is not directly effective, it may have an impact on national law in two ways: either as a principle of interpretation or as a basis for a legal claim for compensation against the state. Where faced with national legislation that is designed to implement a directive, courts should interpret it 'in the light of the wording and the purpose of the Directive'. Even where the member state has failed to implement a directive, the national court is required to interpret existing national law (whether the provisions in question were adopted before or after the directive) 'as far as possible, in the light of the wording and purpose of the directive in order to achieve the result pursued by the latter'. Where a Community obligation has not been implemented, then a national court must be willing to award damages against the state for non-compliance.

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English Private Law, 2nd Edition, Edited by Professor Andrew Burrows, Oxford University Press

Answer **all** parts.

- 2 (a)* **Source A** refers to individual citizens having rights against member states.

Describe how an individual in the United Kingdom could benefit from the rights contained within an EU Directive. [15]

- (b) A Health and Safety Training Directive should have been implemented in 2014 but has still not been implemented.

Explain the different ways the following individuals could benefit from the rights under this Directive:

- (i) Claudia works for the state-owned Up Country Rail Company. In 2013 she was denied access to basic health and safety training as set out in the Directive. [5]
 - (ii) Boris works as a mechanic in a privately owned garage. In 2015 he was denied access to basic health and safety training as set out in the Directive. [5]
 - (iii) Anna works for a private hospital as a cleaner. In 2015 she was not given access to basic health and safety training as set out in the Directive. She has been told that this is because she is too old to benefit from the training even though she has not reached retirement age. [5]
- (c) (i) The Court of Justice of the European Union (CJEU) was formerly known as the European Court of Justice (ECJ). This court has been instrumental in establishing and developing the legal order of the EU.

Describe the composition **and** functions of the Court of Justice of the European Union. [15]

- (ii)* Discuss the extent to which the ECJ's decisions have impacted on the sovereignty of the UK parliament. [15]

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