

# OCR

Oxford Cambridge and RSA

## Friday 19 May 2017 – 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 barcodes.

#### 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 materials below and answer parts 1(a) to 1(c) which follow.

### Exercise on European Law

#### Source A

European Union law can be classified into primary and secondary sources of law. Primary sources consist mainly of the Treaties. One such Treaty is the Treaty on the Functioning of the European Union (TFEU) which gives the legal authority to the institutions of the EU to make the main secondary sources. Article 288 provides:

*To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.* 5

*A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*

*A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.* 10

*A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.*

*Recommendations and opinions shall have no binding force.*

Secondary sources like directives rely on further action being taken by member states. Sometimes member states fail to implement directives or implement them incorrectly. Where such directives contain rights which individuals should be able to rely on, those individuals are denied access to their rights. This can operate unfairly as citizens' access to such rights will depend on whether their member state has acted as they should have. The Court of Justice of the European Union (CJEU) has been creative in developing legal remedies for such individuals. 15 20

The EU institutions referred to above are the Council of the European Union, the European Commission and the European Parliament. The Council of the European Union is the principal decision-making body and is focussed on national interests. The Commission has a range of functions but its two key roles involve proposing legislation and acting as the guardian of the Treaties. The Parliament is a discussion forum which has different levels of influence over the legislative process. 25

#### Source B

##### Article 267 TFEU

*The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;*

*Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.* 5

*Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.*

Articles 267 & 288 taken from <http://eur-lex.europa.eu/homepage.html>

Answer **all** parts.

- 1 (a)\* Describe the composition and roles of **both** the European Commission and the European Parliament. [15]
- (b) **Source B** refers to the power given to the Court of Justice of the European Union (CJEU) to deliver preliminary rulings. Explain what kind of referral, if any, could be made to the CJEU in each of the following situations. Use **Source B** and cases to illustrate your answers:
- (i) The Chancery Division of the High Court is unsure how to apply EU law on the right to free movement of workers and whether it can be limited on the grounds of public policy. [5]
  - (ii) An Employment Tribunal is hearing a case involving the employment rights of disabled workers which may be in breach of EU Law. The CJEU has recently ruled on the same point of law in a similar French case. [5]
  - (iii) The United Kingdom Supreme Court is hearing a case involving a question over banning the import of goods based on the grounds of public morality. The appellants argue that such a ban would be incompatible with EU Law but the issue has never been raised before. [5]
- (c) **Source A** refers to the main sources of EU Law and the problems that can arise when a member state fails to implement a directive.
- (i) Describe Treaty Articles, Regulations and Directives using **Source A** and cases to illustrate your answer. [15]
  - (ii)\* Discuss the problems caused by failures to implement directives and the remedies created by the CJEU. [15]

If you have answered Question 1(a) to 1(c), do not answer this question.

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

### Exercise on Statutory Interpretation

#### Source A

##### Intrinsic and Extrinsic Aids

##### Intrinsic aids

An internal or intrinsic aid is something found within the statute itself which may help a judge to interpret it. These include: the long and short titles, the preamble, interpretation sections, schedules, marginal notes and punctuation.

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##### Extrinsic aids

An external or extrinsic aid is something found outside the Act itself which can be helpful in interpreting it. These include: dictionaries, reports of Royal Commissions or other law reform bodies, case law appropriate to the area of law, the Human Rights Act 1998, EU Law, previous or contemporary Acts of Parliament on similar areas of law, the historical setting in which an Act was passed and Hansard which is the official report of what is said during debates in Parliament when a Bill is going through.

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#### Source B

When judges are required to interpret a word or words in a statute, the traditional approach is to employ one of three rules of interpretation: the literal, golden and mischief rules.

The literal rule gives words their straightforward meaning even where this may lead to ridiculous or unwelcome outcomes. In *R v Maginnis* (1987) the defendant had been caught with drugs in his possession and was charged under s.5(3) of the Misuse of Drugs Act 1971 with having drugs in his possession *with intent to supply*. Maginnis claimed that he was merely returning the drugs to a friend who had left them in his car. If this were accepted he could not be 'supplying' as he was merely restoring the drugs back to their owner. The House of Lords gave a literal interpretation to the word 'supply' in the sense of the simple act of passing something to somebody. One of the worrying aspects of this case is that judges on both sides of the argument used dictionary definitions to justify their positions.

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The mischief rule is an alternative rule which can be used independently. Under this rule the judge looks at the problem that existed with the common law before the statute in question was passed. The judge then attempts to interpret the word(s) in such a way that gives effect to the remedy parliament intended when passing the Act. The mischief rule has the advantage of greater flexibility than the literal rule. However, it can be difficult to find out the intention behind older statutes and some people argue that it gives judges too much flexibility and can lead to judicial law-making which is contrary to the theory of supremacy of parliament.

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Answer **all** parts.

- 2 (a)\* Describe the way the literal rule is used. Use **Source B** and cases to illustrate your answer. [15]
- (b) **Source A** refers to some aids to statutory interpretation. Explain which is the most appropriate aid to interpretation in each of the following situations. Give reasons for your answer.
- (i) Judge Patel needs to find out the intention behind an Act of Parliament regarding domestic violence. The Act was subject to a lively debate during its passage through the Houses of Parliament and was very controversial. [5]
  - (ii) Judge Quentin needs to find out some more information about a new Act of Parliament she is interpreting called the Consumer Credit Act 2015. She is aware that the Act was a consolidating statute which brought together a lot of previous law in the same area. [5]
  - (iii) Judge Rodgers needs to find more information on the problems that led to the passing of the Occupier's Liability Act 1984. He is aware that the Act was enacted as a response to a report by a full-time permanent law reform body set up by Parliament. [5]
- (c) (i) Describe the way the mischief rule is used. Use **Source B** and cases to illustrate your answer. [15]
- (ii)\* Discuss the advantages of the mischief rule including any comparisons to the use of the literal rule. [15]

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