

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 Law Reform and Delegated Legislation

Source A

Law reform and the influences upon parliamentary law-making

Campaigns by pressure groups

Pressure groups are those organisations that seek to influence the direction of law and policy on the basis of particular interests or causes. [A]nyone can join a cause group, and popular examples include the Royal Society for the Protection of Birds ... and Compassion in World Farming.

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Private Members' Bills

Here, a Member of Parliament, without the official support of the Government or their party, puts forward an idea for legal change. [A] famous example is the Abortion Act 1967, which was introduced ... by the Liberal MP, David Steel.

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Legal changes prompted by the law reform bodies/agencies

The most significant law reform body is the Law Commission, which is an independent, full-time agency set up systematically to reform the law.

AS Law, Andrew Mitchell, 2nd Edition, Routledge, pp.16–18

Source B

How is delegated legislation controlled?

[D]elegated legislation is law made by a body other than Parliament but with Parliament's authority. [D]elegated legislation allows the law to be made by unelected individuals, thus there needs to be a system of controls to ensure this power is not abused. There are two ways in which this law making is controlled: by Parliament and by the courts.

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Parliament constructs the enabling Act, which lays down the framework of the law ... One [other] method used by Parliament is the Affirmative Resolution. This requires Statutory Instruments to be approved by Parliament before they become law. An Affirmative Resolution is only used on a limited number of occasions and requires the enabling Act to clearly state the need for the Affirmative Resolution.

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... Any piece of delegated legislation can be challenged in court on the grounds of *ultra vires*, which means the delegated legislation goes beyond the power conferred in the enabling Act. [This gives the courts the benefit of dealing with law which is in force and has known detail where parliamentary controls are based on best estimates of potential future problems.]

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Delegated Legislation, Carol Edwards, A Level Law Review, Vol 5 Number 3, April 2010, pp.12–15

Answer **all** parts.

- 1 (a)* Describe the way that pressure groups, the Law Commission and Members of Parliament can influence and contribute to initiatives for new laws. Use **Source A** and illustrate your answer with examples of Acts of Parliament that have been enacted as a result of such initiatives. [15]
- (b) Explain for each of the following situations the most appropriate delegated legislation control. Use cases or examples to illustrate your answer where appropriate.
- (i) Betty Jones MP is sponsoring the Virtues in Education Bill in Parliament which will give the Minister of Education the power to issue regulations on matters of character education. She is keen to see that any such regulations are discussed and approved by Parliament. [5]
- (ii) Betty's Bill becomes an Act. The Minister of Education later uses powers under the Act to create regulations requiring all children to achieve a Duke of Edinburgh Gold Award by the age of eleven in order to improve their character. Mr Smith, a primary school head teacher, thinks this is ridiculous and wants to take legal action in the High Court. [5]
- (iii) Mr Khan is the parent of a child at Mr Smith's school. He believes the Minister has acted unlawfully by failing to consult with interested parties such as parents, as required in the enabling Act. He would like to challenge the Minister in the High Court. [5]
- (c) (i) Describe the way that resolution procedures, enabling Acts and substantive *ultra vires* can be used to control delegated legislation using **Source B** and your knowledge. [15]
- (ii)* Discuss the extent to which Parliamentary controls are more effective than judicial controls over delegated legislation. [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 Precedent

Source A

Doctrine of precedent

The parts of a judgment – *obiter dicta* and *ratio decidendi*

... [T]he legal rule and associated reasoning behind the decision ... is known as the *ratio decidendi*. Once the *ratio* is identified, everything else in a judgment is known as the *obiter dicta*.

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Per incuriam

... [means 'through lack of care']. It is a way of avoiding an otherwise binding precedent where a court claims that an earlier (binding) precedent was decided without reference to a statutory provision or earlier judgment which would have been relevant] ...

Law-making potential

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... [T]he law must change to adapt to new circumstances. If the law were never to change we would still have laws against witchcraft, homosexuality would still be a crime, women would not have the right to vote and we would have no laws to deal with computers and other new technologies. Many changes are brought about by Parliament enacting new legislation. However, in a rigid system of precedent case law would be slow to change. [Thus] precedent has a degree of flexibility by virtue of the limited powers in both the UKSC and the Court of Appeal to overrule their own previous decisions in limited circumstances.

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The UKSC (formerly the House of Lords) and the Practice Statement 1966

The Practice Statement allows the House of Lords to overrule its own previous decisions 'where it appears right to do so' but cautions against using it too readily – especially in areas where the law needs to be stable and certain like criminal law and areas affecting financial affairs like contract law. The judicial functions of the House of Lords were transferred to the UK Supreme Court (UKSC) in 2009 and Practice Directions 3 & 4 as well as the 2010 case of *Austin v Southwark LBC* (2009) make it clear that the Practice Statement continues to apply in the UKSC.

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My Revision Notes – OCR AS Law, Andrew Shepherd, 2013, Hodder Education, pp. 79–92

Answer **all** parts.

- 2 (a)* Explain the difference between *ratio decidendi* and *obiter dicta* and between overruling and reversing. Use the Source and cases to illustrate your answers. [15]
- (b) Explain which method of avoiding an otherwise binding precedent would be used in each of the following situations.
- (i) A judge in the Court of Appeal (Criminal Division) believes the law in a previous decision of the same court was applied incorrectly as they were unaware of a statutory provision. [5]
 - (ii) A panel of judges in the UK Supreme Court believes that one of its own previous decisions on contract law is no longer valid due to economic changes. [5]
 - (iii) A judge in the High Court (Family Division) believes that a binding decision of the Court of Appeal (Civil Division) involves slightly different material facts. [5]
- (c) (i) Describe the way that the UKSC Practice Directions 3 & 4 (formerly the Practice Statement) are used to avoid an otherwise binding precedent. Use the Source and cases to illustrate your answer. [15]
- (ii)* Discuss the advantages of judges being able to develop the law by using precedent. [15]

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