

OXFORD CAMBRIDGE AND RSA EXAMINATIONS
AS GCE
G152/01
LAW

Sources of Law

THURSDAY 24 MAY 2018: Afternoon

DURATION: 1 hour
plus your additional time allowance

MODIFIED ENLARGED

Candidates answer on the Answer Booklet.

OCR SUPPLIED MATERIALS:

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

OTHER MATERIALS REQUIRED:

None

READ INSTRUCTIONS OVERLEAF



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).

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 (*).

INSTRUCTION TO EXAMS OFFICER/INVIGILATOR

Do not send this Question Paper for marking; it should be retained in the centre or recycled. Please contact OCR Copyright should you wish to re-use this document.

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. 5

[A]nyone can join a cause group, and popular examples include the Royal Society for the Protection of Birds ... and Compassion in World Farming. 10

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. 15

**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. 20

**'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. 5

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. 10 15

... 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.] 20 25

'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*. 5

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] ... 10

Law-making potential 15

... [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. 20

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. 25

The UKSC (formerly the House of Lords) and the Practice Statement 1966 30

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. 35 40

‘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]**

END OF QUESTION PAPER

Copyright Information

OCR is committed to seeking permission to reproduce all third-party content that it uses in its assessment materials. OCR has attempted to identify and contact all copyright holders whose work is used in this paper. To avoid the issue of disclosure of answer-related information to candidates, all copyright acknowledgements are reproduced in the OCR Copyright Acknowledgements Booklet. This is produced for each series of examinations and is freely available to download from our public website (www.ocr.org.uk) after the live examination series.

If OCR has unwittingly failed to correctly acknowledge or clear any third-party content in this assessment material, OCR will be happy to correct its mistake at the earliest possible opportunity.

For queries or further information please contact the Copyright Team, First Floor, 9 Hills Road, Cambridge CB2 1GE.

OCR is part of the Cambridge Assessment Group; Cambridge Assessment is the brand name of University of Cambridge Local Examinations Syndicate (UCLES), which is itself a department of the University of Cambridge.