

**ADVANCED SUBSIDIARY GCE
LAW**

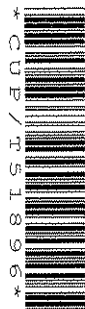
Sources of Law

MONDAY 14 JANUARY 2008

G142

Afternoon
Time: 1 hour

Additional materials: Answer Booklet (8 pages)



INSTRUCTIONS TO CANDIDATES

- Write your name in capital letters, your Centre Number and Candidate Number in the spaces provided on the Answer Booklet.
- Read each question carefully and make sure you know what you have to do before starting your answer.
- Answer **one** question.
- 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 for each question 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 Judicial Precedent

Source

While there are complex rules regarding when courts can avoid following their own past precedent, one aspect of the doctrine of precedent is quite simple. A court in England or Wales is strictly bound to follow the decisions of a court equal to or higher than it in the hierarchy of the courts, subject to well defined exceptions.

In the important case of *R v Holley (2005)*, the Privy Council, hearing an appeal from the Court of Appeal in Jersey, decided that the House of Lords was wrong in *R v Smith (Morgan James) (2000)*. *Smith* has been unpopular with both judges and academics. However, as we know, *Holley*, is at best, persuasive precedent. In fact, the Privy Council had already decided in previous cases, that where a case before it was in effect bound by English law, then it should follow it. On this basis, the result of *Holley* should have been clear; the Privy Council should have followed *Smith*. 5 10

In a more recent case, *R v James and Karimi (2006)*, the Court of Appeal (Criminal Division) had to consider whether to apply *Smith* or whether it had, in fact, been overruled by the Privy Council decision in *Holley*. The Court of Appeal chose the latter view and held that, in exceptional circumstances, a decision of the Privy Council can take precedence over a decision of the House of Lords. What the Court of Appeal did in *James and Karimi* was, in effect, to overrule the precedent of a higher court. 15

Adapted from, 'A-Level Law Review Volume 2, Number 1', Chris Turner, Philip Allan Updates

Answer **all** parts.

- (a) The **Source** (at line 8) refers to 'persuasive precedent'.

Using the **Source** and other cases, describe how persuasive precedent works. [12]

- (b) Consider each of the following situations and explain how the doctrine of precedent will apply.

(i) A case comes before the House of Lords in 2008. There is a previous precedent decided by the House of Lords in 1951. [5]

(ii) A case comes before the Court of Appeal (Civil Division) in 2008. There is a previous precedent decided by the House of Lords in 1980. [5]

(iii) A case comes before the Court of Appeal (Civil Division). There are two past conflicting precedents, one from the House of Lords decided in 1995 and the second from the Privy Council decided in 1999. [5]

- (c) The **Source** (at lines 16 and 17) describes how lower courts can avoid past decisions of higher courts in exceptional circumstances.

(i) Using the **Source** and other cases, explain how lower courts can avoid the doctrine of precedent. [15]

(ii) Discuss the advantages and disadvantages of giving the lower courts more flexibility in avoiding the doctrine of precedent. [12]

QWC [6]

[Total marks: 60]

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

Exercise on Statutory Interpretation

Source

The claimant had been demonstrating in Parliament Square since June 2001. The view of the claimant was that the language of the Serious Organised Crime and Police Act 2005 was clear and unambiguous. It provides that any person who organised, took part in or carried on a demonstration was guilty of an offence if 'when the demonstration starts' authorisation had not been given. He argued that the Act applied only to demonstrations which started after the Act came into force and did not apply to him because his demonstration had started before that date. 5

It was argued by the defendant that the statutory purpose of the Act was to regulate all demonstrations in the vicinity of Parliament and that no rational basis had been suggested as to why Parliament should have intended entirely to exclude demonstrations which had begun before the Act had come into force. 10

The judges held that the purpose (purposive approach) of the Act was important. The words need not be interpreted literally. Their Lordships concluded that the Parliamentary intention was clear. It was to regulate all demonstrations within the designated area, whenever they began. It appeared to their Lordships that when the Act was construed in its context, and having regard to the plain intention of Parliament, it included demonstrations actually starting before the Act came into force. Those starting before, like the claimant's, were held to have started when the Act came into force; and in such cases the words 'when the demonstration starts' referred to that time. 15

Adapted from a summary of the case of *R (Haw) v Secretary of State for the Home Department and another* [2006] EWCA Civ 532 as prepared by Isobel Collins, for ICLR

Answer **all** parts.

- (a) The **Source** at lines 8 and 12 refers to the 'purpose of the Act'.

Using the **Source** and other cases, explain the purposive approach. [12]

- (b) In the following situations, use the **Source** and your knowledge of the rules of statutory interpretation. Explain whether or not the defendant would be guilty under the Serious and Organised Crime and Police Act 2005 as any person who organised, took part in or carried on a demonstration if, 'when the demonstration starts', authorisation had not been given under the Act.

- (i) Mark has organised an anti-war demonstration in January 2008 close to Parliament. He did not seek authorisation and was arrested during the demonstration. [5]

- (ii) Sunny is going to a music concert in January 2008, at a hall close to Parliament. He notices a group of people walking in the direction of the concert and joins them. The group are in fact anti-fur trade campaigners involved in an unauthorised demonstration. [5]

- (iii) Shirley has held regular demonstrations against animal cruelty for twenty years close to Parliament. She believes the Act does not apply to her as she started her demonstration before the Act came into force. [5]

- (c) (i) Using the **Source** and other examples, describe how the courts use the literal rule. [15]

- (ii) Using the **Source** and other examples, discuss the difficulties of judges trying to find Parliamentary intention when interpreting Acts. [12]

QWC [6]

[Total marks: 60]

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