



ADVANCED SUBSIDIARY GCE

LAW

Sources of Law

G152

Candidates answer on the Answer Booklet

OCR Supplied Materials:

- 8 page Answer Booklet

Other Materials Required:

None

Friday 22 May 2009

Afternoon

Duration: 1 hour



INSTRUCTIONS TO CANDIDATES

- Write your name clearly in capital letters, your Centre Number and Candidate Number in the spaces provided on the Answer Booklet.
- Use black ink. Pencil may be used for graphs and diagrams only.
- Read each question carefully and make sure that 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 numbers of the questions you answer on the front of your Answer Booklet.
- 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 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 and your use of appropriate legal terminology (QWC). These questions are marked with an asterisk (*).
- This document consists of **8** pages. Any blank pages are indicated.

Answer **one** question.

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

Exercise on European Union (EU) Law

Source A

Gibson v East Riding of Yorkshire (1999)

Gibson, a swimming pool instructor, employed by her local authority, was paid an hourly rate and was not paid during school holidays. Gibson was entitled to four weeks' paid annual leave under the Working Time Directive (93/104/EC) which was directly enforceable by her.

Gibson had appealed against a decision of an employment tribunal on the grounds that it had erred in law in failing to apply Article 7 of the Directive which provided that every worker was entitled to paid leave of at least four weeks and which was directly enforceable by the applicant against the local authority as an emanation of the state.

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Mr Justice Morison stated that, although directives had direct effect, they did so only in relation to employees of an emanation of the state. That was because the Directive itself was a provision directed to national governments and the state.

10

Source B

It is the European Court of Justice (ECJ), perhaps more than any other European body, which has made the EU what it is today: not simply a loosely connected trade bloc, but a close knit international legal structure which exercises vital influence upon our policy and economy. The Treaty of Rome refers only in passing to the role of the Court. Few could have anticipated the imagination and determination which would be brought to bear by the Court in ensuring that EU law is observed. Despite the limitations of the European Commission, the Court has created a system by which each and every individual beneficiary of EU legal rights can enforce those rights in the courts of his or her own domestic legal system.

5

Adapted from: *The case for the European Court*, Lord Irvine of Lairg LC, *The Times*, 28 April 1998.

Answer **all** parts.

1 (a)* **Source A** refers to directives.

Describe how directives become law in Member States. [15]

(b) Consider whether any of the following individuals could succeed in an action against their employers for failure to comply with an unimplemented directive.

(i) Carlos, an employee of a privatised (formerly state owned) gas company. [5]

(ii) Wu, an employee of a hospital. [5]

(iii) Kelvin, an employee of a car manufacturer. [5]

(c) With reference to **Source B** and your knowledge of European Union law:

(i) Describe and illustrate the role of **both** the European Commission and the European Court of Justice (ECJ). [15]

(ii)* Discuss the effect of the decisions of the ECJ on the enforcement of EU legal rights. [15]

[Total marks 60]

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

Exercise on Judicial Precedent and Law Reform

Source A

Their Lordships ... recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law ... they propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from previous decisions when it is right to do so.

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In this connection they will bear in mind ... the especial need for certainty in the criminal law. This announcement is not intended to affect the use of precedent elsewhere than in this House.

Extract adapted from: *'The House of Lords Practice Statement 1966.'*

Source B

R v R and G (2003) UKHL 50

Two young boys set fire to some newspapers in a shop yard. After they left, the fire spread to the shop itself and to other shops. They were charged with arson under the Criminal Damage Act 1971. The court had to decide the meaning of the word 'reckless' in the Act. Prior to the passing of the Act there had been a report by the Law Commission. However, in *Metropolitan Police Commissioner v Caldwell (1981)*, the House of Lords had refused to look at the report but instead gave an objective meaning of recklessness (i.e. that a defendant would be guilty if an ordinary adult would have realised the risk). In *R v R and G* the court consulted the report and using the Practice Statement overruled *Caldwell*.

5

Extract adapted from: *Key Cases English Legal System*, Martin & Turner, Hodder.

Answer **all** parts.

2 (a)* **Source B** refers to the Law Commission.

Describe the role of the Law Commission. [15]

(b) Explain the power of the House of Lords in the following situations.

(i) A case similar to *R v R and G* comes before the House of Lords. [5]

(ii) The House of Lords is hearing an appeal from the Court of Appeal. The Court of Appeal refused to follow the House of Lords precedent. [5]

(iii) A case comes before the House of Lords. There is a previous House of Lords decision but it conflicts with a decision of the European Court of Justice. [5]

(c) **Source A and Source B** both refer to the Practice Statement.

(i) Describe the use of the Practice Statement using the Sources and other cases. [15]

(ii)* Discuss the advantages and disadvantages of the Practice Statement being limited to the House of Lords. [15]

[Total marks 60]

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