

ADVANCED SUBSIDIARY GCE

LAW

Sources of Law

G152

Candidates answer on the answer booklet.

OCR supplied materials:

- 8 page answer booklet
(sent with general stationery)

Other materials required:

None

Wednesday 25 May 2011

Afternoon

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. 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.
- Answer **one** question.
- If you use additional sheets of paper, fasten these securely to the answer booklet.
- Write the number 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 (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.

Answer **one** question.

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

Exercise on Legislation and Delegated Legislation

Source A

Delegated legislation is made by some person or body other than Parliament but under the authority of Parliament. This authority is given through an enabling act. An enabling act is created by Parliament through its normal processes, an example being the Police and Criminal Evidence Act. This Act will have been accepted by both Houses and received Royal Assent. By conferring powers on others it allows Parliament to utilize expert advice, but Parliament must be careful when it creates an enabling act because this sets out the limits of power.

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Source B

STATUTORY INSTRUMENT (SI)

1991 No. 2687

Police and Criminal Evidence Act 1984 (Tape-recording of Interviews) (No. 1) Order 1991

Made	29 th November 1991
Laid before Parliament	6 th December 1991
Coming into Force	1 st January 1992

5

Now, therefore, in pursuance of the said section 60(1)(b), the Secretary of State hereby orders as follows:

- 2** This Order shall apply to interviews of persons suspected of the commission of indictable offences (serious offences eg murder) which are held by police officers at police stations in the police areas specified in the Schedule to this Order and which commence after midnight on 31st December 1991.
- 3(1)** Subject to paragraph (2) below, interviews to which this Order applies shall be tape-recorded in accordance with the requirements of the code of practice on tape-recording which came into operation on 29th July 1988
- 3(2)** The duty to tape-record interviews under paragraph (1) above shall not apply to interviews – (a) where the offence of which a person is suspected is one in respect of which he has been arrested or detained under section 14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989.

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Answer **all** parts.

1 (a)* Describe how an Act of Parliament is made with reference to **Source A** and your knowledge of legislation. [15]

(b) Each of the following interviews was conducted by police officers and took place at a police station covered by Statutory Instrument 1991/2687 (**Source B**), but none of the interviews was tape-recorded.

Explain the lawfulness of each of the following interviews:

(i) On the 1st November 1991 Gemma was arrested for a summary offence (not serious) and was interviewed. [5]

(ii) Carl was suspected of an indictable offence (serious) and was interviewed on 1st November 2000. [5]

(iii) Hank was detained under section 14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (see lines 19–20) and was interviewed in March 2000. [5]

(c) With reference to **Sources A** and **B** and using your knowledge of delegated legislation:

(i) describe the three different types of delegated legislation. [15]

(ii)* discuss the advantages **and** disadvantages of delegated legislation. [15]

[Total marks 60]

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

Exercise on Judicial Precedent

Source

When judges decide cases a number of different techniques might be used. When dealing with cases where there is no previous decision to bind them, judges may make an 'original precedent', as in *Donoghue v Stevenson* (1932). However, where judges need to consider a relevant earlier decision, one of the following techniques may apply:

Follow - if the facts of the present case are sufficiently similar to an earlier case, the precedent set by the earlier case is followed and the law applied in the same way so as to produce a decision. This is the doctrine of binding precedent. 5

Distinguish – this is a method of avoiding a previous decision because the material facts in the current case are sufficiently different from an earlier one.

Per incuriam - this occurs when a previous decision has been made in error. The judge will ignore the bad law and form a new precedent. 10

Overrule – this occurs when a decision states that a decision in an earlier case is wrong. The power to overrule cases is used sparingly because it weakens the authority of and respect for parliament which is a major disadvantage.

Reverse - if the decision of a lower court is appealed to a higher one, the higher court in the same case overturns the decision of the lower court. 15

Persuade – this occurs where a court does not have to follow another courts' decision but can choose to follow it if they wish.

Adapted from: Elliot and Quinn. English Legal System. 10th Edition.

Answer **all** parts.

- 2 (a)* Describe original precedent **and** overruling using the **Source** and other cases to illustrate your answer. [15]
- (b) Discuss the most appropriate method of avoiding precedent in each of the following situations:
- (i) The judge in a case believes a potentially binding precedent has been made in error because it ignored a relevant Act of Parliament. [5]
 - (ii) The case is being heard on appeal. The appellate court judges believe the first instance judge decided the case incorrectly. [5]
 - (iii) The judge in a case believes that the material facts of the current case are different to a previous binding precedent. [5]
- (c) Using the **Source** and other cases to illustrate your answer:
- (i) describe persuasive precedent. [15]
 - (ii)* discuss the advantages **and** disadvantages of the doctrine of precedent. [15]

[Total marks 60]

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