

Support Materials

Sources of Law G142

Exemplar Candidate Answers

These materials should be read alongside the approved specimen question papers and mark schemes.

Question 1 – Exercise on European Union Law and Delegated Legislation

- (a) With reference to Source B, briefly explain with examples, the terms 'vertical direct effect' and 'horizontal direct effect'. [12]
- (b) Apply the content of The Health and Safety (Display Screen Equipment) Regulations 1992, in Source B, to each of the situations described below:
- (i) Mario is about to start a new job as librarian in a small school. The job will require occasional use of a computer monitor. The Deputy Head is also the school Health and Safety Officer and is anxious to comply with all relevant legislation. [5]
- (ii) Amir works as a telephone-sales representative. His regular daily work requires long periods of sustained concentration as he transfers information from customers onto a computer system. He is finding it increasingly difficult to sustain his concentration. [5]
- (iii) Julie works as a receptionist in a busy office. Her daily work involves monitoring a TV screen (fed from security cameras) and constant use of a computer monitor to perform a variety of functions. She has started to suffer with blurred vision. [5]
- (c) (i) Source A (at line 7) refers to 'statutory instruments'. Describe with examples the nature of statutory instruments and the process of bringing them into force. [15]
- (ii) Using Source A and other examples discuss the advantages and disadvantages of delegated legislation. [12]

QWC [6]

Total Marks [60]

Specimen Answer - Grade A

A) Vertical effect gives individuals rights against their own governments. If a state fails to implement a directive the individual can rely on vertical effect as long as the claim is against the state or an arm of the state as in *Marshall v Southampton AHA*.

Horizontal effect gives individuals rights against other individuals. If the state fails to implement a directive then a individual cannot rely on it. In *Duke v GEC* Mrs Duke was unable to claim on the equal treatment directive as her employer was not an arm of the state. As we can see from source B horizontal does not apply to directives it does however apply to Treaties and regulations, as does vertical effect. However an individual can claim for financial loss caused by a non implemented directive as in the case of *Francovitch*.

B (I)

As Mario is using a computer monitor this is covered by definition of the display screen equipment. The deputy head will have to comply with regulation one and perform an assessment to assess the risk.

B (II)

Amir does use a computer daily for long periods, he is therefore a user. He uses computers therefore it would satisfy the display equipment section. It is not stated that there has been an assessment under regulation one. He works long periods but regulation two states he should have breaks or activity change.

B (III)

Watching security images will not count as screens showing tv or film picture are not covered however using a monitor to do a variety of jobs would. She would also be a user according to lines 9 and 10. Her employer should perform an assessment according to regulation one and apply the conditions of regulation two. She can ask for an eye test at the employers expense.

C (I)

Statutory Instruments are the most common form of delegated legislation with over 3000 made a year. Power to make them is normally given to a Govt Minister through an Enabling Act. An



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example of this would be the Access to Justice Act 1999 that allows the Lord Chancellor to issue statutory instruments.

To become a Statutory Instrument it must go through Parliament either through a positive or negative resolution procedure. An affirmative resolution means that it will have some debate and be voted on by Parliament. A negative resolution means that it will not be debated and will become law unless objected to in 40 days. The vast majority of statutory instruments go through via the negative resolution procedure.

C (II)

There are lots of positive and negative factors.

Parliament does not have time to deal with all legislation therefore by giving power to somebody else they can focus on more important matters. Also because of the enabling act they will still have control and can tightly set the scope of the powers.

Delegated legislation is also very good in matters of emergency. This can be seen in Orders in Council that were used in the Gulf War.

Parliament also often lack expertise regarding issues. This is important as they can delegate it to experts like Govt departments or those who have specific local knowledge as occurs with By laws.

Source A lines 5 -7 also shows advantages of delegated legislation.

Disadvantages include law being made by non elected bodies. This is not democratic and the public may have no idea who these people are making the law. There is also the risk of sub delegation. That is were the person given the authority to make the law passes it on to someone else as is common with statutory instruments.

The controls are also very poor. Parliamentary control is difficult due to the volume of delegated legislation. This is made worse by the fact that most of it goes through a negative resolution procedure as it may not be checked. The Scrutiny Committee also lack authority to question the substance of the delegated legislation.

Court control can only occur if it is ultra vires. Without this the application for judicial review will fail.

There are many advantages and disadvantages but given the constraints on Parliamentary law making it advantages outweigh its disadvantages.

Specimen Answer - Grade C

a) The term vertical direct effect means if the time period that is set for the implementation of the directive is not met then it gives rights. It is demonstrated in the case of Marshall.

Vertical direct effect

Horizontal direct effect

State fails to implement within time limit

claim fails

Claim is against arm of the state

Individual cannot rely on it

Individual can rely on the directive

Duke v GEC

B (i)

Because Mario would be using the computers only occasionally then not all the measures outlined would need to be implemented. The safety officer however would need to look at the work station and pick up any possible hazards.

B (ii)

Amir is a user and the equipment conforms to the definition. Therefore the company would need to take a number of measures in order to apply. They would have to assess the work station to assess any hazards. They would also ensure there were regular breaks and eye tests if needed.

B (iii)

Some part of Jane's job does not apply as it involves excluded images. However, her other activities do fit the definition of user and she is using equipment that is specified. The company would need to ensure that it complies with all three regulations.

C (i)

Statutory instruments refer to rules and regulation made by government ministers. Different ministers are given authority to make regulations in areas they are responsible for eg the transport executive has powers in area concerning transport matters. This is a major method of law making as there are about three thousand statutory instruments passed each year. Source A can be seen as an example. Statutory instruments can be made through positive and negative procedures. Positive requires a vote in parliament. Negative will be become law unless objected to within forty days.

C (ii)

Delegated legislation frees up parliamentary time. Parliament can therefore concentrate on the big issues of the day, leaving the more nitty gritty matters to others. Also ministers and there departments have more experience within their areas than parliament. Parliament can control delegated legislation through various controls eg the enabling Act. The courts can also control delegated legislation when they have gone beyond their powers. A lot of European legislation is passed trough delegated legislation. Delegated legislation has a number of disadvantages. The controls are not effective as there is too much volume and MPs may not understand some of the technical issues.

Specimen Answer - Grade E

Vertical Direct Effect

Horizontal Direct Effect

B (i)

According to regulation 1 the deputy head would have to assess the workstation. According to regulation 2, Mario should have certain breaks/. According to regulation 3, the deputy head may have to pay for eye tests.

B (ii)

According to regulation 1 it should be assessed and a Amir should be given regular breaks.

Regulation 2

Regulation 3

The company may have to pay for eye tests. He is clearly a user.

B (iii)

There is a problem with Julie. Her work does not come under the regulation. She is watching a TV.

C (i)

Statutory instruments occur when ministers in government departments are given authority to make delegated legislation. There are over three thousand of these each year. Statutory



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instruments are the most popular type of delegated legislation. There are over three thousand each year. An example is the Lord Chancellor who makes laws concerned with legal funding.

C (ii)

Advantages:

Quick

Gives Parliament time

Control

Knowledge

Disadvantages

Control

Volume

Question 2 – Exercise on Statutory Interpretation

- (a) **Source B** refers to Lord Denning’s dissatisfaction with the ban on the use of the external aid Hansard prior to 1993.

Explain what Hansard is and the circumstances in which courts may make a reference to it. [12]

- (b) Read **Source A** lines 4-8. Using your knowledge of statutory interpretation consider whether any of the following ‘*sells or hires or offers for sale or hire or gives to any other person – any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife*’ and therefore commits an offence under s1(1) of the Restriction of Offensive Weapons Act 1959:

(i) Jane, a youth worker, confiscates a flick knife from a member of her youth club and gives it to her supervisor. [5]

(ii) Tony, an antique dealer, displays an old military knife with a spring opening device in his shop window with a price ticket attached to it. [5]

(iii) Fola buys a ‘job lot’ box of kitchen utensils from a car boot sale. Without examining the contents closely she donates the box to a charity shop. The box is found to contain a flick knife. [5]

- (c) (i) Explain the literal rule of statutory interpretation using case examples and with reference to **Source A**. [15]

(ii) Using the sources and other cases discuss the advantages and disadvantages of this approach to statutory interpretation. [12]

QWC [6]

Total Marks [60]

Specimen Answer - Grade A

a) Hansard is the official report of what is said in Parliament as a bill passes through its stages. It is an extrinsic aid and its use has caused significant judicial debate as can be seen in Source B.

It wasn't until the case of *Pepper v Hart* that Hansard was allowed to be used. This case used the practice statement to overrule the decision in *Davis v Johnson*. It can only be used when

- a) the legislation is ambiguous, obscure or lead to an absurdity
- b) where the material relied on was statements from a Govt Minister or sponsor of the bill
- c) the statements relied on were clear.

If they do not satisfy these criteria Hansard cannot be used as in the cases of *Deegan*.

B (I)

If taking the literal rule Jane would be guilty of offence as she has given her supervisor a flick knife. However as this would lead to an absurd result it is more likely that the golden will be used. This clearly was not the purpose or intent of the act so following this approach she will not be guilty.

B (II)

This is the same as *Fisher v Bell* therefore following its precedent it cannot be contrary to the act. The court would be therefore be bound by this precedent.

B (III)

As Fola has given flick knife to another person she is guilty of an offence. This is absurd as she did not know the contents of the box. It would be better if they use a different rule e.g. the golden, mischief or purposive as it would lead to a better outcome.



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C (i)

The literal rule takes the words in the Act as it is written and applies their plain meaning. This rule provides a degree of certainty, therefore you will likely know the verdict before it is given. However this can be a lazy approach to take as pointed out by Zander. However despite its problems it has been a popular approach.

In *Fisher v Bell*, source A the literal rule was taken. It was also taken in the case of *Berrimen*. Here a railway worker was killed whilst oiling the tracks. His wife was denied compensation because the literal was followed.

In *Whitely v Chappel* a person avoided liability because the literal rule was followed. He used a dead person and because dead people cannot vote he avoided liability.

C (ii)

Using the literal rule causes injustice as can be seen in the case of *Berrimen*. The widow did not get compensation because of this pathetic approach. However it is quick to use and can be perfect when a word's meaning is clear.

By using this approach it forces Parliament to consider what it writes carefully or deal with the consequences. This happened in *Fisher v Bell* as they had to pass a new Act to rectify the problems they created. The literal rule results in better thought-out legislation. Although given the complexity of English language it is impossible for Parliament to cover every aspect.

The literal rule also respects Parliamentary Sovereignty. It is not up to a judge to make or question the law of Parliament; their function is just to apply it.

It does result in absurd outcomes like the *Whitely* case discussed above. It was clearly Parliament's intent to stop this from happening yet the judges just ignore it.

Specimen Answer - Grade C

a)

Hansard is an extrinsic aid, this means it is a source of information used from outside the act or law. Hansard itself is an official report of what was said in Parliament when the act was passing through parliament

Lord Denning is as strong supporter of Hansard and believes that it assists judges in their decision making. However Hansard is not widely used and the rules have been relaxed in *Pepper v Hart*. Hansard can only be used in set ways.

B (i)

Yes she is committing an offence because she is giving a dangerous weapon as described in the act to another person. She should have given them to the police.

B (ii)

No he is not guilty because it is like the case in Source A. He is not offering for sale it is an invitation to treat.

B (iii)

Yes she is guilty because she gives the weapon to another person, however this is stupid as she is unaware.

C (i)

The literal rule as in Source A is when the plain ordinary meaning of a word is used. This rule works that if the ordinary meaning is absurd it is not the judges' problem it's parliament's. The case



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of LNER v Berriman demonstrates this rule because there was a dispute over the word repair and the defendant died not literally repairing so his wife got not compensation.

The case facts of Source A are very similar to the case of Fisher v Bell, a literal rule case. This case demonstrates how the rule is used

C (ii)

The use of the literal rule is positive as it leads to certainty. It also leads to better more specific drafting of legislation. It also acknowledges the power of parliament with judges in a secondary role.

However applying the literal rule can lead to absurdities in cases. This is because general words have a number of meanings. Also by using this rule judges don't have to take responsibility for their decisions. This is also considered the laziest of the rules because it doesn't think about the consequences.

Specimen Answer - Grade E

Hansard is what is said in court. Lord Denning wanted to use it but was denied.

B (i)

Flick knife fulfils this part of the act. Literal rule is taken would be guilty. However, would use different rule such as Golden to stop her from being sent to prison.

B (ii)

Not guilty because of same with source.

B (iii)

Cannot be guilty because does not know what's in the box. There is a rule about crime that people must know that they intended to commit a crime.

C

Literal rule is about applying what it says the dictionary. This is illustrated in the case of cheesman when a man was caught masturbating in a toilet using the literal rule he was not guilty. This is the most popular rule because judges like it.

C (ii)

It is good because it's quick and simple to use. It can be harsh in situations but that is not the judges fault. He is only doing his job.

Sorry running out of time.
