

**ADVANCED SUBSIDIARY GCE
LAW**

Sources of Law

FRIDAY 23 MAY 2008

G142

Afternoon
Time: 1 hour

Additional materials (enclosed): Answer Booklet (8 page)

Additional materials (required):
None



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 European Union Law

Source A

Marshall v Southampton Area Health Authority (1986)

Miss Marshall, a dietician, was compulsorily retired by the Health Authority from her job when she was 62, although she wished to continue to 65, the State retirement age for men. It was the Authority's policy that the normal retiring age for its employees was the age at which State retirement pensions became payable: for women this was 60, though the Authority had waived the rule for two years in Miss Marshall's case. She claimed that the Authority was discriminating against her by adopting a policy that employees should retire at state pension age, hence requiring women to retire before men. The national court made reference to the European Court of Justice (ECJ) asking for directions on the meaning of the Equal Treatment Directive. The ECJ found that there was a conflict with the UK law, and the UK changed its legislation to conform.

5

10

Source B

Directives may have vertical direct effect but not horizontal direct effect. This means that they impose obligations on Member States and not on individuals.

The ECJ has found a number of ways to widen access where the principle of vertical direct effect applies. First, it has defined 'the State' very broadly to include all public bodies, including local authorities and nationalised industries. This meant in *Marshall v Southampton AHA* the claimant could rely on the Directive even though she was not suing the Government itself, because her employer was considered part of the State.

5

Source A and B adapted from: *English Legal System*, Elliot & Quinn, Longman.

Answer **all** parts.

- (a) **Source A** at lines 7–10 refers to the European Court of Justice (ECJ).

Describe the role and composition of the European Court of Justice. [12]

- (b) Using **Source B**, consider whether any of the following have a claim against their employers for a failure to comply with a directive.

(i) Bert is a midwife working for a private hospital. [5]

(ii) Winston is an accountant working for a company which was owned by the Government twenty years ago. [5]

(iii) Letitia is a dog warden working for a local council. [5]

- (c) With reference to **Source A and Source B**:

(i) Using the sources and other examples, describe directives and how they become law in Member States. [15]

(ii) 'Directives can never have horizontal direct effect.'

Discuss the problems which are caused by this. [12]

QWC [6]

[Total marks 60]

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

Exercise on Delegated Legislation

Source A

Steve Thorburn, the market trader convicted in Sunderland Magistrates' Court this week for selling fruit in pounds and ounces alone, rather than along with metric measures, was not prosecuted under the law as it is usually understood - a statute passed after deliberation by MPs and Peers. He was prosecuted under 'delegated legislation'. The case was brought under the Units of Measurement Regulations 1994 – which came into effect in 2000. 5

Parliament passed 3,412 similar regulations last year. MPs have only been back at work a few days after the Christmas break and already they have passed 60 of them. While Parliament gets to "see" them, few have even the remotest chance of being debated, let alone defeated.

There is nothing new about government's use of statutory instruments or SIs – the annual average has been rising in recent years. (Annual records began in 1895). 10

From Edward Page, *Whitehall's bread and butter*, 19 January 2001
© Guardian News & Media Ltd 2001

Source B

There are a variety of controls of delegated legislation. Judicial controls include procedural *ultra vires* (where the correct procedures have not been followed) and substantive *ultra vires* (where the Minister has gone beyond the powers given to him). The courts are also concerned with reasonableness and decisions that are not considered valid where no reasonable person would have made them. Parliamentary controls include negative and affirmative resolutions. It is argued that the controls on delegated legislation are not sufficient and need improving. 5

Adapted from Terence Ingman, *The English Legal Process*.

Answer **all** parts.

(a) Source A refers to statutory instruments.

Describe and illustrate statutory instruments **and** two other types of delegated legislation. [12]

(b) Discuss whether the delegated legislation could be successfully challenged in the courts, in the following situations.

(i) A Local Authority creates a byelaw banning singing near houses. It is designed to stop carol singers. [5]

(ii) A Minister has been given power to make delegated legislation on legal funding. He introduces regulations concerning health care. [5]

(iii) A Minister brings a statutory instrument into force without consulting all the parties specified in the Enabling Act. [5]

(c) (i) Describe the need for delegated legislation. [15]

(ii) Discuss the disadvantages of delegated legislation. [12]

QWC [6]

[Total marks 60]

Copyright Acknowledgements:

- Q.1 Source A Adapted from C Elliot & F Quinn, *English Legal System*, Longman.
Q.1 Source B Adapted from C Elliot & F Quinn, *English Legal System*, Longman.
Q.2 Source A From Edward Page, *Whitehall's bread and butter*, The Guardian, 19 January 2001© Guardian News & Media Ltd 2001, www.guardian.co.uk.
Q.2 Source B Adapted from © T Ingman, *The English Legal Process*, Blackstone Press, 1996. Reproduced by kind permission of Oxford University Press, www.oup.com.

Permission to reproduce items where third-party owned material protected by copyright is included has been sought and cleared where possible. Every reasonable effort has been made by the publisher (OCR) to trace copyright holders, but if any items requiring clearance have unwittingly been included, the publisher will be pleased to make amends at the earliest possible opportunity.

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.