

**Tuesday 15 January 2013 – Morning**

**AS GCE LAW**

**G152/01/1 Sources of Law**

**INSERT– QUESTION PAPER**

**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. HB pencil may be used for graphs and diagrams only.
- Answer **one** question; either question 1 (all parts) **or** question 2 (all parts).
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- If additional space is required, you should use pages 14–16 of the Answer Booklet. If you use additional sheets of paper, fasten these securely to the 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.

### **INSTRUCTION TO EXAMS OFFICER/INVIGILATOR**

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Answer **one** question.

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

### Exercise on Precedent

#### Source A

The practice of distinguishing is one of the methods judges can use in order to avoid an otherwise binding precedent. The method can be seen in operation in the case of *Hunter v Canary Wharf*. In this case the London Docklands Corporation had built a very large office block in Canary Wharf. The building caused the loss of a television signal to Mr Hunter in a nearby block of flats. Mr Hunter sued in the tort of nuisance for loss of a television signal. It had previously been held that such a loss would not constitute a nuisance in the earlier case of *Bridlington Relay Ltd. v Yorkshire Electricity Board*. The Court of Appeal in *Hunter* distinguished the case from *Bridlington Relay*, as that case involved loss of a signal through electrical interference **not** the presence of a building, and therefore Mr Hunter won the case in nuisance.

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#### Source B

“As is of course very well known, the House of Lords issued a Practice Statement on 26 July 1966 which stated that it would still treat former decisions of the House as normally binding, but that it would depart from a previous decision when it appeared right to do so ... Its application was considered and applied from time to time by the Appellate Committee during the 40 years or so that were to elapse until 1 October 2009 when the appellate jurisdiction was transferred from the House of Lords to this court.

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The Supreme Court has not thought it necessary to re-issue the Practice Statement as a fresh statement of practice in the court’s own name. This is because it has as much effect in this court as it did before the Appellate Committee in the House of Lords. It was part of the established jurisprudence relating to the conduct of appeals in the House of Lords which was transferred to this court by section 40 of the **Constitutional Reform Act 2005**. So the question which we must consider is not whether the court has power to depart from the previous decisions of the House of Lords which have been referred to, but whether in the circumstances of this case it would be right for it to do so.”

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*per* Lord Hope in *Austin v Southwark London Borough Council* (2010) (UK Supreme Court).

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The overruling allowed by the Practice Statement has given the House of Lords (UK Supreme Court) the flexibility to avoid the otherwise rigid nature of binding precedent. However, some would argue that it gives judges too much power.

Answer **all** parts.

- 1 (a)\* Describe the method of avoiding precedent known as distinguishing **and** what is meant by binding precedent using **Source A** and other cases. [15]

Start writing your answer to Question 1(a)\* on page 2.

- (b) Identify **and** explain what the courts can do in the following situations, using your knowledge of the rules of *stare decisis*:

- (i) A case comes before the House of Lords in 1960. An earlier decision of the House of Lords in 1920 on the same matter is now believed to be out of date. [5]

Start writing your answer to Question 1(b)(i) on page 5.

- (ii) A case comes before the Court of Appeal (Civil Division) in 1950. An earlier decision of the Court of Appeal (Civil Division) on the same matter was made in error. [5]

Start writing your answer to Question 1(b)(ii) on page 6.

- (iii) A case comes before the UK Supreme Court in 2012. An earlier decision of the UK Supreme Court from 2011 on the same matter is now believed to be wrong. [5]

Start writing your answer to Question 1(b)(iii) on page 7.

- (c) **Source B** refers to the continuing relevance of the Practice Statement and highlights the flexibility it offers.

- (i) Describe the development **and** use of the Practice Statement using **Source B** and other cases. [15]

Start writing your answer to Question 1(c)(i) on page 8.

- (ii)\* Discuss the advantages **and** disadvantages of the system of precedent. [15]

Start writing your answer to Question 1(c)(ii)\* on page 11.

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

### Exercise on Statutory Interpretation

#### Source A

The golden rule is one of the rules used by judges when interpreting a word or words in a statute. It allows a judge to 'escape' an absurd outcome produced by the application of the literal rule. The use of the rule can be seen in cases such as *Adler v George*.

Under section 3 of the **Official Secrets Act 1920**, it was an offence to "obstruct Her Majesty's Forces in the vicinity of a prohibited place". Adler was arrested for obstructing such forces whilst inside a Royal Air Force station. Adler's defence argued that he was not 'in the vicinity' of a prohibited place as he was, in fact, 'in' the prohibited place. Under a literal interpretation of 'in the vicinity' the judge would have to find Adler not guilty. This would clearly have been an absurd outcome as people protesting outside the station would have been guilty whilst those protesting inside would not. The golden rule was used to avoid this absurdity and Adler was found guilty. 5  
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#### Source B

"[T]he judges are on fairly safe ground if they apply the 'mischief' rule, otherwise known as the rule in *Heydon's Case* (1584). This bids them to look at the common law (ie the legal position) before the Act, and the mischief that the statute was intended to remedy; the Act is then to be construed in such a way as to suppress the mischief and advance the remedy. This approach to the reading of statutes is an early example of what is now commonly referred to as the 'purposive' approach, which goes rather wider than merely ascertaining the mischief. Lord Nicholls explains: 5

'Nowadays, the courts look at external aids for more than merely identifying the mischief the statute is intended to cure. In adopting a purposive approach to the interpretation of statutory language, courts seek to identify and give effect to the purpose of the legislation. To the extent that extraneous material assists in identifying the purpose of the legislation, it is a useful tool'. (*R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme* [2001] 2 A.C. 349 at 397E, HL.) 10

So stated, the purposive approach is rather wider than the mischief rule, since it does not suppose (as the older rule does) that all statutes are passed for the purpose of remedying a mischief, as opposed to promoting some social good or purpose. In recent years, the purposive approach has supplanted both the literal rule and the mischief rule as the proper approach to the ascertainment of Parliament's will." 15

*Learning the Law*. 12<sup>th</sup> Edition. Glanville Williams. Sweet & Maxwell. 2002.

Answer **all** parts.

- 2 (a)\* Describe the golden rule and its use, using **Source A** and other cases. [15]

Start writing your answer to Question 2(a)\* on page 2.

- (b) The following people have all been charged under the (fictional) **Control of Ice Cream Vans Act 2012**. This was passed by Parliament to reduce the number of accidents involving children visiting ice cream vans parked in dangerous circumstances. The Act states that “it shall be an offence to sell ice cream from any van parked in the vicinity of a school”.

Explain how **all** of the rules of statutory interpretation apply to each of the following situations:

- (i) Giovanni needs to make his sales target or he will lose his job. He sells ice cream from his van on a busy main road opposite the local school. [5]

Start writing your answer to Question 2(b)(i) on page 5.

- (ii) Mario has driven his van onto a school playground. He is selling ice cream and claims that the Act does not apply to him as he is ‘in’ the school rather than ‘in the vicinity’ of the school. [5]

Start writing your answer to Question 2(b)(ii) on page 6.

- (iii) Alfonso has parked his van on the busy main road outside the school and is giving away free ice cream as a marketing event. [5]

Start writing your answer to Question 2(b)(iii) on page 7.

- (c) **Source B** refers to the mischief rule.

- (i) Describe the mischief rule and its use, using **Source B** and other cases. [15]

Start writing your answer to Question 2(c)(i) on page 8.

- (ii)\* Discuss the advantages **and** disadvantages of the mischief rule. [15]

Start writing your answer to Question 2(c)(ii)\* on page 11.





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