

OXFORD CAMBRIDGE AND RSA EXAMINATIONS
AS GCE
G152/01
LAW

Sources of Law

MONDAY 2 JUNE 2014: Afternoon
DURATION: 1 hour
plus your additional time allowance
MODIFIED ENLARGED

Candidates answer on the Answer Booklet.

OCR SUPPLIED MATERIALS:

12 page Answer Booklet (OCR12)
(sent with general stationery)

OTHER MATERIALS REQUIRED:

None

READ INSTRUCTIONS OVERLEAF

INSTRUCTIONS TO CANDIDATES

Write your name, centre number and candidate number in the spaces provided on the front of the answer booklet. Please write clearly and in capital letters.

Use black ink. HB 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.

Write your answer to each question on the lined pages in the answer booklet. The question numbers MUST be clearly shown.

Answer ONE question; either question 1 (all parts) OR question 2 (all parts).

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 legibly and 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 (*).

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 case of Re: S (adult: refusal of medical treatment) (1992) is a good example of all three types of precedent. It ruled on a point of law on which there was no direct authority and was, therefore, an original precedent. It was binding on lower courts and the judge looked at an American case as a persuasive precedent in coming to his decision. 5

Source B

The following extracts explain what should happen when a court below the United Kingdom Supreme Court (UKSC) is confronted with a conflict between an existing decision of the UKSC and a later decision of the European Court of Human Rights (ECtHR): 5

Firstly, the Court of Appeal's view:

"It seems to us that in these circumstances, the only permissible course is to follow the decision of the House of Lords but, to give permission, if sought and not successfully opposed, to appeal to the House of Lords, thereby and to that extent taking the decision in 'Connors' into account. If in due course the House considers that we have not followed the appropriate course, it will no doubt make this plain." 10

(Price v Leeds City Council [2005]) 15

Secondly, the UKSC giving approval to this approach:

“The prospect arises of different county court and High Court judges, and even different divisions of the Court of Appeal, taking differing views of the same issue. As Lord Hailsham observed (*ibid*, p 1054), “in legal matters, some degree of certainty is at least as valuable a part of justice as perfection.” That degree of certainty is best achieved by adhering, even in the Convention context, to our rules of precedent. It will of course be the duty of judges to review Convention arguments addressed to them, and if they consider a binding precedent to be, or possibly to be, inconsistent with Strasbourg authority, they may express their views and give leave to appeal, as the Court of Appeal did here. Leap-frog appeals may be appropriate. In this way, in my opinion, they discharge their duty under the 1998 Act. But they should follow the binding precedent, as again the Court of Appeal did here.”

Per Lord Bingham in ‘Kay and others and another (FC) (Appellants) v London Borough of Lambeth and others (Respondents) Leeds City Council (Respondents) v Price and others and others (FC) (Appellants) (2006)’ UKHL 10, at para 43.

Answer ALL parts.

- 1 (a)* Describe binding, original and persuasive precedent. Use Source A and cases to illustrate your answer. [15]**
- (b) Use your knowledge of the court hierarchy and the rules of precedent to decide whether the following courts are likely to be bound or not bound. Give reasons for each of your answers:**
- (i) A case comes before the United Kingdom Supreme Court (UKSC) in 2014 involving the misuse of computers. The UKSC is referred to one of their own earlier decisions made in 1951 which they now feel is out of date. [5]**
 - (ii) A case comes before the Court of Appeal (Civil Division) in 2014 involving the rights of an individual to sue for false imprisonment. It is argued that a binding decision by the UKSC from 2010 has been contradicted by a 2012 decision of the European Court of Human Rights which would be consistent with the view being argued in the present case. [5]**
 - (iii) A case comes before the Court of Appeal (Civil Division) in 2014 involving a question over what can constitute harm in assault and battery when suing in civil law. A similar issue was decided by the Court of Appeal (Criminal Division) in 1994 under criminal law. [5]**

- (c) (i) Source B (at lines 32–33) states that the Court of Appeal should follow binding precedent.**

Using the source and other examples, explain the powers of judges in the Court of Appeal (Civil and Criminal Divisions) to depart from an otherwise binding precedent. [15]

- (ii)* Discuss the arguments for extending the powers of the Court of Appeal. [15]**

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

EXERCISE ON STATUTORY INTERPRETATION

Source A

Given its name, the INTERPRETATION ACT 1978 might be expected to be a really useful aid to assist a judge when interpreting a word or words in a statute. In fact, it is of very limited assistance. The Act sets out some basic generic rules such as:

5

Words in singular include the plural (and vice versa)

Words in the male gender include the female (and vice versa)

References to the ‘Sovereign’ refer to whichever King or Queen is reigning at the time

10

Times are in Greenwich Mean Time or British Summer Time (whichever is in force at the time)

Measurements are presumed to be measured in straight lines.

15

Thus the court has to rely on a wider range of aids to interpretation which the judge can find both within and beyond the Act itself.

Source B

“My Lords, at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based on the separation of powers: Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a *lacuna* in the existing law, the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament’s opinion on these matters that is paramount.”

***per* Lord Diplock, ‘Duport Steels Ltd v Sirs’ (1980)
1 WLR 142**

Answer ALL parts.

- 2 (a)* Describe both intrinsic AND extrinsic aids available to assist a judge in statutory interpretation. Use Source A and your knowledge. [15]**
- (b) Explain which is the most appropriate aid to interpretation in each of the following situations. Give reasons for your answer.**
- (i) Judge Adams needs to find out the true and original meaning of the word ‘menaces’ as he is trying to interpret an offence from the METROPOLITAN TOWN CLAUSES ACT 1847 called ‘begging with menaces’. [5]**
 - (ii) Judge Khan needs to find out some more information about a new Act of Parliament she is interpreting. She is aware that the full-time permanent body of experts that produced the draft Bill also presented Parliament with a detailed account of their consultations and research findings. [5]**
 - (iii) Judge Smith needs to find out the intention behind a new Act of Parliament regarding tax allowances. The Act had a very controversial passage through the Houses of Parliament and was fiercely debated. [5]**

- (c) (i) The literal rule is referred to in Source B. Using the source and other cases, explain how this rule is applied. [15]**
- (ii)* Discuss the advantages and disadvantages of the literal rule. [15]**



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