

483/01

LAW - LW3

THE LEGAL SYSTEM OF ENGLAND AND WALES

A.M. MONDAY, 11 June 2007

(45 minutes)

ADDITIONAL MATERIALS:

In addition to this examination paper, you will need a 12 page answer book.

Instructions to candidates

- Candidates are required to answer this compulsory question.

Information for candidates

- The question carries 25 marks.
- Candidates are reminded of the need for good English and clear presentation. All questions should be answered in continuous prose. The quality of written communication will be assessed in all answers.

Answer the following question.

1. Read the following source material and answer the parts of this question based on it.

In an article published in 1987, Lord Mackay who was then Lord Chancellor said: "...A scheme of precedent is clearly capable of providing important benefits. It assists litigants to assess the nature and scope of legal obligations and, to the extent that it enables them to predict the likely outcome of disputes, it restricts the scope of litigation. By allowing the vast bulk of disputes to be settled in the shadow of the law, a system of precedent prevents the legal apparatus from becoming clogged by a myriad of single instances. It reflects a basic principle of the administration of justice that like cases should be treated alike and therefore generates a range of expectations from different participants in the legal process. Rules of law based on a system of precedent are therefore likely to exhibit characteristics of certainty, consistency and uniformity".

Source: Adapted from *The Times* (1987) 3 December

(a) What is meant by "precedent"? [4]

and

(b) What are the advantages and disadvantages of precedent? [7]

and

(c) Read the following cases and explain whether and on what grounds should the court depart from precedent.

In 2003 the House of Lords in the fictitious case of *R v Angel* held the defence of provocation for murder was only available where the defendant had been put in a sudden and temporary rage due to provocation.

In 2006, Janet killed her husband. She had planned to do so over a period of months because she had been repeatedly physically abused by him over many years. The prosecution claimed that on a basis of the (fictitious) House of Lords decision in *R v Angel* that the defence of provocation was not available to her.

(i) What factors are relevant to the House of Lords in determining whether or not to overturn their previous decision? [7]

(ii) What would the difference be, if any, had the (fictitious) case of *R v Angel* been decided by the Court of Appeal and Janet's case was now being considered by the Court of Appeal? [7]