

**Wednesday 30 May 2012 – Morning**

**AS GCE LAW**

**G152/01/I Sources of Law**

**INSERT – QUESTION BOOKLET**

**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 you use additional sheets of paper, fasten these securely to the Answer Booklet.
- Write the number of the questions you answer on the front of your 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 **(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 Judicial Precedent

#### Source A

*Stare decisis* means to stand by what has been decided. It is central to the operation of the system of binding precedent. Through the hierarchy of the courts the concept of *stare decisis* is reinforced in that higher courts should bind lower courts. However, strict adherence to this principle can cause problems for certain courts, like the Court of Appeal. By not allowing greater flexibility it stops the development of the law as it cannot be adapted to social change quickly as it was in *Schorsch Meier*.

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#### Source B

Should precedent created by the House of Lords (Supreme Court) be followed by the Court of Appeal? This was considered by Lord Denning in *Schorsch Meier GmbH v Henin* [1975]. On this occasion the Court of Appeal was split. Lord Denning and Foster J agreed that a 1961 decision of the House of Lords had run its course and should not be followed and decided that they would not follow it. Lawton J disagreed because he argued that the Court of Appeal does not have the power to ignore the House of Lords. This is because the Court of Appeal is bound by the House of Lords. The majority decision of the Court of Appeal therefore, was to refuse to follow the decision of the House of Lords. This case was not appealed to the House of Lords.

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The House of Lords soon had an opportunity to comment on this issue in a case named *Miliangos v George Frank (Textiles) Ltd* [1977]. The Court of Appeal in *Miliangos* chose to follow its own previous decision and not the relevant House of Lords precedent. When the case went before the House of Lords their Lordships agreed to overrule their own previous decision but took the opportunity to criticise Lord Denning's approach in the *Schorsch Meier* case for ignoring the doctrine of *stare decisis*.

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It is interesting to note Lord Greene's statement in *Young v Bristol Aeroplane Company Ltd* [1944] that the Court of Appeal is bound by its own decisions. The decision in *Young* allows the Court of Appeal to depart from its previous decisions only in three situations. Some argue that this is too rigid and restricts the proper development of the law, whilst others counter that this creates certainty within the legal system.

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Adapted from: 'Learning Legal Rules'. Holland and Webb. 7th Edition.

Answer **all** parts.

1 (a)\* **Source A** at line 1 refers to *stare decisis*.

Describe the concept of *stare decisis* using the **Sources** and other cases to illustrate your answer. [15]

(b) **Source B** at lines 5–7 refers to the powers of the Court of Appeal. Explain whether or not the Court of Appeal can depart from the previous decision(s) in each of the following situations using Source B and your knowledge:

(i) A case concerning a medical operation is being heard by the Court of Appeal (Criminal Division). Two years earlier, a similar case was heard by the Court of Appeal (Civil Division). [5]

(ii) A case concerning damages is being heard by the Court of Appeal. The only previous precedent was set by the Supreme Court. [5]

(iii) A case involving breach of contract is being heard by the Court of Appeal (Civil Division). There are two conflicting previous precedents. These were set by the Court of Appeal (Civil Division) and the Supreme Court. [5]

(c) With reference to **Sources A** and **B**:

(i) Describe the powers of the Court of Appeal within the doctrine of precedent using cases to illustrate your answer. [15]

(ii)\* Discuss whether or not the powers of the Court of Appeal within the doctrine of precedent should be extended. [15]

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

### Exercise on Legislation and Delegated Legislation

#### Source A

Ideas for new laws and initiatives to change existing laws come from a variety of sources. In 1965 the government set up a full-time permanent law reform body called the Law Commission. Its role is set out on their website:

'The Law Commission reviews areas of the law that have become unduly complicated, outdated or unfair. Following a process of research and consultation, the Commission makes recommendations for reform of the law to Government.'

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Adapted from the Law Commission website: <http://www.justice.gov.uk/lawcommission/index.htm>

#### Source B

Statutes passed by Parliament in the form of enabling Acts will lay down a legal framework which leaves the creation of detailed delegated legislation to government departments, local authorities or public bodies. Such bodies must act within the constraints of the Enabling Act.

Since delegated legislation is not always made by elected bodies it is subject to a range of controls, designed to ensure that the power delegated is not abused. These controls, whether they are exercised by the courts or Parliament should ensure that delegated legislation is effective and does not exceed the limitations in the enabling Act. An example of a control exercised by the courts can be seen in the process of judicial review. Judicial review hearings involve the courts undertaking a review of the process that has been followed in making a decision. If a body that makes delegated legislation is found to have acted beyond its powers, the court can declare the decision *ultra vires*.

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However, many question the effectiveness of the controls over delegated legislation. Both parliamentary and court controls have many defects. For example, court controls depend on an individual bringing a claim in the first place. Furthermore, it is difficult for an individual to identify that delegated legislation is *ultra vires*, and even if they do they may lack the means or the knowledge to commence the judicial reviews process.

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Adapted: from 'Elliot and Quinn AS Law for OCR'. Pearson.

Answer **all** parts.

2 (a)\* **Source A** at lines 2–3 refers to the Law Commission.

Describe **both** the role **and** composition of the Law Commission using **Source A** and your knowledge. [15]

(b) Using **Source B** and your knowledge, state the **most suitable body** to make delegated legislation in the following situations. Explain what makes that body suitable in each situation:

(i) To allow laws to be made for a local area. [5]

(ii) To allow the Home Office to amend laws on police powers. [5]

(iii) To implement legislation quickly due to a national emergency. [5]

(c) With reference to **Source B** and your knowledge of delegated legislation:

(i) Describe **both** the parliamentary **and** court controls over delegated legislation. [15]

(ii)\* Discuss the effectiveness of **both** the parliamentary **and** court controls over delegated legislation. [15]





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