



ADVANCED SUBSIDIARY GCE

LAW

Sources of Law

G152

Candidates answer on the Answer Booklet

OCR Supplied Materials:

- 8 page Answer Booklet

Other Materials Required:

None

Thursday 14 January 2010
Morning

Duration: 1 hour



INSTRUCTIONS TO CANDIDATES

- Write your name clearly in capital letters, your Centre Number and Candidate Number in the spaces provided on the Answer Booklet.
- Use black ink. Pencil may be used for graphs and diagrams only.
- Read each question carefully and make sure that 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 numbers 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 part **(a)** and part **(c)(ii)** questions you will be assessed on the quality of your written communication and your use of appropriate legal terminology (QWC). These questions are marked with an asterisk (*).
- This document consists of **8** pages. Any blank pages are indicated.

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

Directives are passed under the authority of Article 249 of the Treaty of Rome. A Directive can only ever be vertically directly effective. It could never be horizontally directly effective. This means that an unimplemented or an improperly implemented Directive can only be relied upon and enforced against the state, which fails to implement it.

This is demonstrated in the case of *Marshall v Southampton and South West Hampshire AHA (No 1)* (1986). A reference was made under Article 234 on the issue of whether different retirement ages for men and women in the UK amounted to discrimination. The European Court of Justice (ECJ) confirmed that it did. It also identified that the applicant was able to use the Directive against her employer but only because her employer was an emanation (arm) of the state. Examples of emanations of the state include local authorities, recently privatised companies or hospitals. 5

The ECJ subsequently identified that the national courts should decide against what bodies a Directive could be enforced using vertical direct effect. The fact that Directives can only be vertically directly effective inevitably creates major anomalies and injustices. This can be seen in contrasting the decisions of *Duke v GEC* (1988) and *Marshall v Southampton and South West Hampshire AHA (No 1)* (1986). 10

Adapted from *Unlocking EU Law*, Storey & Turner.

Source B

Article 234 references are the means by which national courts gain preliminary rulings on points on European Union law, so that they can apply them correctly. The European Court of Justice created a test in *CILFIT* (1981) to decide whether a reference was necessary.

Adapted from *A-level Review, EU Law Demystified*, Chris Turner.

Answer **all** parts.

- 1 (a)* With reference to **Source A** and **Source B** and using your knowledge of European Union Law.

Describe the Article 234 reference procedure using the **Source** and other cases to illustrate your answer. [15]

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

(i) Millie, an employee of a recently privatised (former state owned) company. [5]

(ii) Carla, an employee of a local authority. [5]

(ii) Amanda, an employee of a circus. [5]

- (c) With reference to **Source A** and using your knowledge of European Union Law.

(i) Describe how Directives become law in Member States. [15]

(ii)* Discuss the injustices associated with Directives. [15]

[Total marks 60]

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

Exercise on Statutory Interpretation

Source

The 'mischief rule', or the rule in *Heydon's case*, is that where a statute was passed to remedy a mischief the court will, if possible, adopt the interpretation of the statute which will have the effect of correcting the mischief in question.

A more modern explanation is that of Lord Diplock in *Jones v Wrotham Park Settled Estates*, where he specified that three conditions must be satisfied before the rule can be applied: 5

- 1 It must be possible to determine from consideration of the Act as a whole, precisely the mischief that it was the purpose of the Act to remedy;
- 2 It must be apparent that the draftsmen and Parliament had inadvertently overlooked, and so omitted to deal with, the mischief; 10
- 3 It must be possible to state with certainty what were the additional words that would have been inserted by the draftsmen and approved by Parliament had the omission been drawn to their attention.

The rule is often used in cases in which the literal rule (applying the plain ordinary dictionary meaning) cannot be applied. In order to ascertain the mischief which the statute was passed to correct, the judge may legitimately have regard to the preamble of the statute, the long title, headings (intrinsic aids) and to extrinsic sources such as reports of Royal Commissions, Law Reform Committees or *Hansard* which may indicate the state of the law before the Act was passed. 15

Adapted from: 'Walker & Walker's *English Legal System*',
R. Ward 8th Edition, Butterworths.

Answer **all** parts.

2 (a)* The **Source** at lines 14–15 refers to the literal rule.

Describe the literal rule using the **Source** and other cases to illustrate your answer. [15]

(b) Using the **Source**, identify and explain the most suitable intrinsic or extrinsic aids that could be used in the following situations:

(i) The House of Lords is considering an ambiguous word. The meaning of this word was discussed by Parliament during the passage of the Bill. [5]

(ii) The House of Lords is trying to cover a gap in the law left by an Act. This Act was based on the Law Commission's recommendations. [5]

(iii) The House of Lords is considering an ambiguous word inside an Act. There are notes inserted into the Act by a draftsman. [5]

(c) With reference to the **Source** and other cases.

(i) Describe the mischief rule. [15]

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

[Total marks 60]

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