

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

Friday 28 May 2010
Afternoon

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 Delegated Legislation

Source

Delegated legislation is the description given to the vast body of orders in council, statutory instruments and bylaws created by subordinate bodies under specific powers delegated to those bodies by Parliament. The need for delegated legislation is that it enables regulations to be made and altered quickly. The powers delegated are frequently defined in the widest terms. An example is the Human Rights Act which empowers a minister to make such amendments to legislation, or subordinate legislation, as he considers appropriate in order to remove incompatibility with the European Convention on Human Rights. 5

The powers to delegate are subject to the control of Parliament but, where the legislative power is conferred on a minister, this may not be an effective control. Delegated legislation is valid if the right to make it is conferred by Parliament (intra vires – inside the powers). If it is not it is said to be ultra vires (outside the powers) and is, in that event invalid. However, unless and until declared ultra vires by a judgment in an action in the courts, it must be treated as part of the law and enforced accordingly. The courts treat delegated legislation differently from primary legislation. Unlike an Act of Parliament, delegated legislation can be declared invalid, because it is ultra vires. 10 15

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

Answer **all** parts.

- 1 (a)* Describe the need for delegated legislation using the **Source** and your knowledge of delegated legislation. [15]
- (b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations:
- (i) To implement a European Union Directive quickly when Parliament is not sitting. [5]
 - (ii) To allow a government department to issue regulations on education. [5]
 - (iii) For a train company (a public corporation) to implement a ban on the use of mobile phones by passengers. [5]
- (c) With reference to the **Source** and your knowledge of delegated legislation.
- (i) Describe the controls on delegated legislation. [15]
 - (ii)* Discuss the effectiveness of the controls on delegated legislation. [15]

[Total marks 60]

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

Exercise on Judicial Precedent and Law Reform

Source A

The House of Lords has the power to overrule its own past decisions using the 1966 Practice Statement. The use of the Practice Statement is illustrated in the case of *A v Hoare* (2008). In this case the defendant was convicted of rape in 1989 and sent to prison. In 2004 he was released on licence and then won £7 million on the lottery. The claimant then sought to claim damages for the rape. Under the precedent decided in *Stubbings v Webb* (1993) the claimant would not be entitled to compensation because she had not started her claim in time. The House of Lords used the Practice Statement overruling *Stubbings v Webb* so as to give courts flexibility in allowing cases to proceed in such circumstances.

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The House of Lords decision to overrule *Stubbings* does not come as a great surprise, the decision having been described as unbalanced by the Law Commission when reviewing this area in 2001. It recommended a number of changes in this area. No steps were ever taken to implement any further legislation, perhaps as Lord Hoffman suggests in the *Hoare* judgment, because the Commission's recommendations were not confined to the *Stubbings* inconsistency but proposed a completely new law. This has been a common problem for the Law Commission and its recommendations.

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Extract adapted from: http://www.bevanbrittan.com/metis/article/claims/col30/col30c_rick1.asp

Source B

The Law Commission was established in 1965 with the duty to keep the law under review. It has five full-time commissioners all of whom are lawyers, and are appointed by the Lord Chancellor. The Law Commission has made a significant impact on the development of the law but it has encountered many problems. One major issue involves the inconsistent implementation by Parliament of the Law Commission's proposals.

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Answer **all** parts.

2 (a)* With reference to **Source A** and other cases.

Describe the use of the Practice Statement. [15]

(b) Explain the power of the House of Lords in the following situations:

(i) A case similar to *A v Hoare* is about to be heard by the House of Lords. [5]

(ii) The House of Lords is hearing an appeal in 1965. There is a previous precedent on this issue from the House of Lords in 1960. [5]

(iii) A case comes before the House of Lords. There is a previous decision by the Privy Council which conflicts with an earlier decision of the House of Lords. [5]

(c) With reference to **Source A** and **Source B** and your knowledge.

(i) Describe the role of the Law Commission. [15]

(ii)* Discuss the problems encountered by the Law Commission in fulfilling its role. [15]

[Total marks 60]

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