

Wednesday 11 January 2012 – Morning

AS GCE LAW

G152/01/1 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.
- 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 (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 European Union Law

Source A

European Union law can be classified into primary and secondary sources of law. Primary sources are mainly the Treaties. Secondary sources are legislation passed by the institutions and include regulations, directives and decisions.

The two most important treaties of the European Union (EU) are the Treaty of Rome (as amended) and the Treaty of Lisbon. These and other treaties have laid down the framework and given the legal authority to the institutions of the EU. The main institutions which exercise the functions of the EU are:

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- The Council of Ministers
- The Commission
- The European Parliament
- The European Court of Justice (ECJ)

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Each of these institutions has a different but essential role with regard to the smooth running and development of the EU. The Council of Ministers is the principal decision-making body; its decision making is sometimes made more difficult due to national interests. The Commission has a range of functions but its two key roles involve proposing legislation and acting as the guardian of the Treaties.

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The ECJ has two key functions: judicial and supervisory. The ECJ, through a series of landmark judgments, has ensured that EU legislation has been consistently enforced. In *Francovich v Italy* the ECJ paved the way for individuals to claim compensation when a Member State had failed to live up to its obligations. This approach conferred on individuals key benefits which would have been lost without the judgment of the ECJ. The ECJ has also ensured that Treaty obligations have been followed in landmark judgments such as *Factortame*. This case clearly highlights that EU law is supreme and must be followed if there is a conflict with national law.

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Answer **all** parts.

- 1 (a)* **Source A** at lines 13–15 refers to the Council of Ministers **and** the Commission.

Describe the role and composition of **both** the Council of Ministers **and** the Commission using **Source A** and other examples to illustrate your answer. [15]

- (b) Identify and explain the most appropriate source of European Union law in the following situations using **Source A**:

(i) The EU wishes to alter the Treaty of Rome. [5]

(ii) The EU wishes to harmonise the law on banking. [5]

(iii) The EU wishes to pass a law on insurance that will be instantly and identically applied in all member states. [5]

- (c) **Source A** at line 17 refers to the European Court of Justice (ECJ).

(i) Describe the role and composition of the ECJ using **Source A** and other examples to illustrate your answer. [15]

(ii)* Discuss the impact of ECJ decisions on the enforcement of EU legal rights. [15]

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

Exercise on Statutory Interpretation

Source A

Lady Justice Arden in *Commissioners of Customs & Excise v Elm Milk Limited* [2006] CA

The courts have in the last few decades changed their approach to statutory interpretation. Their approach is now less literal than it used to be. A more purposive approach is now often used. This entails that the judge will have a greater role in interpretation than he would have under a purely literal approach since having found the purpose the judge will need to consider whether such purpose is furthered or hindered by the interpretation that he favours. That approach will enable the courts further to ensure that an enactment achieves what the legislature intended. But to adopt a purposive approach the court needs to understand as best it can, from the words Parliament has used, the purpose or policy behind the provisions that the court has to interpret. It may well be that in this case, the judge, as probably often happens, did this silently but it is desirable in the interests of the application of the case in subsequent cases for the court to state the view that it has formed of Parliament's purpose so it can be seen what part the judge's perception of the purpose of the statute played in his conclusion. However judges must be careful in its use as some argue it goes beyond their role.

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Adapted from <http://www.sixthform.info>

Source B

Even the literal rule does not take words in complete isolation. It is common sense that the other words in the Act must be looked at to see if they affect the word or phrase in dispute. In looking at the other words in the Act the courts have developed a number of minor rules which can help make the meaning of the words and phrases clear where a particular sentence construction has been used. These rules are *ejusdem generis*, *expressio unius exclusio alterius* and *noscitur a sociis*.

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Answer **all** parts.

2 (a)* **Sources A** and **B** refer to the literal rule.

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

(b) **Source B** refers to the rules of language.

Identify and explain which of the three rules of language in **Source B** is the best to resolve the application of the statutes in the following situations:

(i) An Act uses the phrase 'cats, dogs and other animals'. Would the Act apply to a bear? [5]

(ii) An Act states that it specifically applies to 'cats, dogs and budgies'. Would the Act apply to a bear? [5]

(iii) An Act states 'chickens, geese and eggs'. Would the Act apply to chocolate eggs? [5]

(c) **Source A** illustrates the purposive approach.

(i) Describe the purposive approach using **Source A** and other cases to illustrate your answer. [15]

(ii)* Discuss the advantages **and** disadvantages of the purposive approach. [15]

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