

'AS' LEVEL LAW

ENGLISH LEGAL SYSTEM

STUDY UNITS AND EXAM QUESTIONS
2000-2001

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CIVIL COURTS

WHAT YOU NEED TO RESEARCH

County Court and High Court; jurisdiction at first instance: small claims; fast track; multi-track.
Appeals and appellate courts.
Problems of using the courts.

RECOMMENDED READING

J. Martin, *The English Legal System*, Second Edition, chapter 6.
Elliott & Quinn, *English Legal System*, Third Edition, chapter 12.

PROGRESS TEST

1. Who enquired into the civil justice system in the 1990s?
2. What did he say the civil justice system should be? Were these aims being achieved?
3. What reforms were recommended?
4. Explain the overriding objective of the new Civil Procedure Rules?
5. What control do judges now have over proceedings?
6. What are the three tracks?
7. Have the Woolf Reforms been successful? (see newspaper articles)
8. How are civil cases started? Which document is required and how much money?
9. What action will the defendant then take?
10. What will the judge then do?
11. How are small claims dealt with in the County Court?
12. Briefly list the defects of the small claims procedure.
13. Briefly list the jurisdiction of the County Court.
14. Briefly list the jurisdiction of the High Court.
15. What are appellate courts? List them.
16. What is the appeal route from the County Court?
17. What is the appeal route from the High Court?
18. What further appeals are possible?
19. Briefly explain the remedies available in civil cases?
20. How are civil judgments enforced?
21. What proposals for reform have been made?

ALTERNATIVES TO THE COURTS

WHAT YOU NEED TO RESEARCH

Arbitration; conciliation; mediation.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 7
Elliott & Quinn, *English legal System*, chapter 16

PROGRESS TEST

1. What is negotiation?
2. What is mediation?
3. What is a formalised settlement conference?
4. What mediation services are available?
5. What research has been carried out on mediation?
6. What is conciliation?
7. How do ACAS play a role in conciliation?
8. What is private arbitration?
9. What are the principles behind the Arbitration Act 1996?
10. What is a *Scott v Avery* clause?
11. Where there is an arbitration agreement in a contract, what does the Arbitration Act 1996 provide?
12. How is the arbitrator chosen?
13. Outline the procedure for the arbitration hearing.
14. What is an award and can it be challenged?
15. How is arbitration used in consumer disputes?
16. How is arbitration used in the courts (ie, the County Court and the Commercial Court)?
17. What are the advantages and disadvantages of arbitration?

EXAM QUESTIONS ON THE CIVIL PROCESS

1. AB Instruments Ltd ordered machinery worth £150,000 from XY Machines Ltd. When the machinery arrived it did not work properly and AB Instruments were unable to use it for their work. AB Instruments claim that this has cost them over £200,000 in lost orders and they wish to claim this amount and the cost of repairs to the machinery from XY Machines Ltd.

Answer **all** parts

- (a) Explain to AB Instruments Ltd in which court and how they could start a court action against XY Machines Ltd and what problems are likely to occur in bringing a case to court. [20]
- (b) Discuss what alternative methods of resolving the dispute are available to AB Instruments Ltd. [20]
- (c) If the case is decided in court, what appeal routes are available to the parties? [10]

(OCR, June 2000)

2. What reforms can be suggested to improve the civil justice system?

(OCR, May 1999)

3. Compare the advantages and disadvantages of both:

- (i) tribunals
- (ii) commercial arbitration

with the use of the courts for resolving civil disputes.

(Oxford Board, May 1998)

4. "Now that the jurisdiction of the small claims court has been increased to £3,000, Alternative Dispute Resolution is less important."

To what extent, if at all, do you agree with this statement?

(Oxford Board, May 1997)

5. Two months ago Spenders Ltd purchased machinery for use in their factory from Whizz Electrics. The machinery cost £35,000 but is defective and has gone wrong several times. Spenders wish to claim compensation from Whizz Electrics.

- (a) In which courts could a claim be made? [10 marks]
- (b) What other methods of resolving the dispute might be used? [15 marks]
- (c) Advise Spenders Ltd on the advantages and disadvantages of the various methods of dispute resolution, including the courts, which are available to them. [25 marks]

(Oxford Board, May 1996)

6. "We aim at a Rolls-Royce system of civil justice, but most people would prefer an affordable mini."

Are the courts the most effective way of dealing with civil claims?

(Oxford Board, May 1995)

7. Harriet has been injured in a road traffic accident caused by Angela's negligence and wishes to claim damages for her pain and suffering.

- (a) Advise Harriet as to where and how she could start civil proceedings against Angela. [15 marks].
- (b) If she is dissatisfied with the result of the case, what appeals are open to her? [15]
- (c) To what extent have the changes in jurisdiction under the Courts and Legal Services Act 1990 improved the court as a forum for personal injury disputes? [20 marks]

(Oxford Board, May 1994)

8. Ebenezer Scrooge alleges he has been defamed by an article in a newspaper.

- (a) Advise him whether he can obtain legal aid and advice. [5 marks]
- (b) Explain to him which court would hear the case and, if he is not successful, what appeal routes would be open to him. [10 marks]
- (c) How satisfactory is the present method of dealing with defamation actions? [35]

(Oxford Board, May 1993)

9. Lacon sold Morland a second-hand car. Morland has now discovered that the car belonged to Nimrod, who has reclaimed it. Morland now wishes to sue Lacon for the purchase price.

- (i) Before what court or tribunal may the proceedings take place? [16 marks]
- (ii) What appeals, if any, might be available if Morland is dissatisfied with the decision? [16 marks]
- (iii) Is the law relating to the adjudication of small claims satisfactory? [18 marks]

(Oxford Board, May 1991)

TRIBUNALS

WHAT YOU NEED TO RESEARCH

Role and composition of administrative tribunals in outline.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 7.5
Elliott & Quinn, *English Legal System*, chapter 13

PROGRESS TEST

1. What role is played by administrative tribunals in the legal system?
2. What is the composition of tribunals?
3. What is the procedure in tribunals?
4. In which two ways are tribunals controlled by the courts?
5. What roles are played by the Parliamentary Ombudsman and the Council on Tribunals?
6. Consider the advantages and disadvantages of tribunals.
7. Have any other problems been raised?
8. What official review of tribunals is currently taking place? (see LCD press release)

EXAM QUESTIONS

1. Compare the advantages and disadvantages of both:
(i) tribunals
(ii) commercial arbitration
with the use of the courts for resolving disputes.

(Oxford Board, May 1998)
2. Evaluate the role of two of the following:
(a) Tribunals;
(b) The Crown Prosecution Service;
(c) Queen's Bench Divisional Court.

(Oxford Board, May 1994)
3. (a) What role do tribunals play in our legal system?
and
(b) Are the methods of supervising tribunals and reviewing their decisions adequate?

(Oxford Board, May 1992)

THE EUROPEAN COURT OF JUSTICE

WHAT YOU NEED TO RESEARCH

Article 234 (formerly A177) referrals; relationship to English courts.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 4.1.5
Elliott & Quinn, *English Legal System*, chapter 1, p69-72

PROGRESS TEST

1. What is the function of the ECJ?
2. What is the composition of the ECJ?
3. What is the first type of case the ECJ decides?
4. What references from national courts does the ECJ hear?
5. What does Article 234 (formerly Article 177) of the EC Treaty state?
6. What is the difference between a discretionary referral and a mandatory referral?
7. What guidelines did the Court of Appeal give in *Bulmer v Bollinger* (1974)?
8. What guidelines did the ECJ give in *CILFIT v Ministro della Sanita* (1982)?
9. What latest guidelines has the ECJ issued for referrals for preliminary rulings?
10. Does the ECJ decide cases referred to it by national courts?
11. What is the role of the Court of First Instance?
12. Consider the differences between the ECJ and English courts.

EXAM QUESTIONS

1. See Data Paper, Q1, June 2000.
2. Describe the composition and role of the European Court of Justice and evaluate its importance with regard to the English legal system.

(Oxford Board, May 1998)
3. Describe and evaluate the work of the European Court of Justice.

(Oxford Board, May 1995)

POLICE POWERS

WHAT YOU NEED TO RESEARCH

Powers to stop and search; powers of arrest; powers of detention and the treatment of suspects at the police station.

Balance of individual rights and the need for investigative powers .

RECOMMENDED READING

J. Martin, *The English Legal System* , chapter 8

Elliott & Quinn, *English Legal System* , chapter 9, p237

PROGRESS TEST

BACKGROUND

1. Consider the background to the Police and Criminal Evidence Act 1984 (ie, the Royal Commission on Criminal Procedure).
2. Give examples of miscarriages of justice in the 1970s and 1980s.
3. Consider the role of the Royal Commission on Criminal Justice (1993) (also known as the Runciman Commission).
4. What are 'arrestable offences' and 'serious arrestable offences'?

POWERS TO STOP AND SEARCH

5. When do the police have the power to stop and search people and vehicles?
6. Are there any safeguards?
7. What criticisms have been made of this power?
8. Do the police have any other powers to stop and search?
9. When can the police make road checks in an area?

POWERS TO SEARCH PREMISES

10. When can the police enter premises with a search warrant?
11. What is the correct procedure?
12. Do the police have to comply precisely with these requirements?
13. Can the police enter premises without a search warrant under PACE 1984?
14. When else can the police enter and search premises?
15. What will happen if the police exceed their powers?

POWERS OF ARREST

16. What are the general police powers of arrest?
17. When can the police and private citizens arrest without a warrant?
18. What extra powers do the police have compared to private citizens?
19. What are reasonable grounds for suspecting?
20. What powers of arrest do the police have under s25?
21. What other powers of arrest do the police have?
22. In what manner must the arrest be made?
23. Do the police have the right to search an arrested person?

POWERS OF DETENTION

24. a) What are the time limits on detention?
b) What is the role of the Custody Officer?
25. What are the rights of a detained person?
26. Can a detained person be questioned by the police?
27. What protection do suspects have in the way they should be treated whilst being detained and questioned?
28. What changes have been made to the right to silence?
29. What are the rules regarding strip searches?
30. What are the rules regarding intimate searches?
31. What are the rules regarding the taking of fingerprints and body samples?

COMPLAINTS

32. How can complaints be made against the police?
33. Can a civil action be commenced against the police?

EXAM QUESTIONS

1. Charlie, aged 16, when walking down a street near his home is stopped by a police officer, who demands that Charlie empty his pockets. When Charlie asks why, the police officer tells him that he is going to be taken to the local police station. At the police station Charlie is immediately interviewed about a burglary. The interview last for four hours.

Explain what rights Charlie has in this situation and discuss whether these rights have been breached.

(OCR, June 2000)

2. To what extent does the law relating to police powers (such as those to stop, search, arrest and detain) strike a balance between allowing the police sufficient freedom to investigate crime and adequately protecting the individual's rights?

(OCR, May 1999)

3. Desmond, aged 26, has been arrested by the police in connection with a murder.

(a) Describe and comment on the police powers in respect of detention, body searches and interview at the police station in such a case. [30 marks]

(b) Critically comment on the role of the Crown Prosecution Service in the case if Desmond is charged with murder. [20 marks]

(Oxford Board, May 1998)

3. Tony was stopped in the street by a police officer, who insisted that he had the right to search Tony. Nothing was found in the search, but Tony was then taken to the local police station for questioning about a recent burglary.

(a) Advise Tony about his rights under the Police and Criminal Evidence Act. [25 marks]

(b) How adequate are these provisions for safeguarding the liberty of the citizen? [25]

(Oxford Board, May 1997)

CRIMINAL COURTS

WHAT YOU NEED TO RESEARCH

Pre-trial matters: bail, mode of trial, committal proceedings.
Jurisdiction of Magistrates' Courts, Youth Courts and Crown Courts at first instance.
Appeals.
Role of the Criminal Cases Review Commission.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapters 9 and 10
Elliott & Quinn, *English Legal System*, chapter 9

PROGRESS TEST

PRE-TRIAL MATTERS

1. What are the three categories of criminal offences?
2. What is new first hearing that takes place in the Magistrates' Court for summary and indictable offences?
3. Consider the police powers to grant bail.
4. Do the police have the power to impose conditions on a grant of bail?
5. How will a court decide how to grant bail under the Bail Act 1976?
6. What changes were made to the granting of bail by the CJA 1988 and the B(A)A 1993?
7. What other limitations were placed on the granting of bail by the CJPOA 1994?
8. What is the role of the Crown Prosecution Service?
9. How does the CPS decide if a prosecution should continue?
10. What were the results of the CPS Annual Report 1994?
11. What were the results of the Glidewell Report (June 1998)?

JURISDICTION

1. What is the jurisdiction of the Magistrates' Courts?
2. What is the Youth court?
3. What is the jurisdiction of the Crown Court?

PROCEDURE

1. What are the powers of magistrates in summary trials?
2. What happens during a summary trial if the defendant pleads guilty?

3. What happens during a summary trial if the defendant pleads not guilty?
4. What is the procedure for the trial of triable either way offences?
5. What are the implications of choosing jury trial?
6. Should the right to choose trial by jury be kept?
7. What are committals for sentence?
8. What are committal proceedings?
9. What preliminary matters arise concerning trial on indictment in the Crown Court?
10. What is the trial procedure during trial on indictment?

APPEALS

1. What is the appeal route from the Magistrates' Court to the Crown Court?
2. Can there be a further appeal?
3. What is the appeal route from the Magistrates' Court to Queen's Bench Divisional Court?
4. Consider the appeal route from the QBDC to the House of Lords.
5. What appeals can be made from the Crown Court by the defendant?
6. What are the rules on appeals?
7. What are the grounds under which the Court of Appeal can allow an appeal?
8. Can the prosecution appeal against an acquittal?
9. Can the prosecution appeal against an unduly lenient sentence?
10. What is the procedure for appealing to the House of Lords?
11. What is the role of the Criminal Cases Review Commission?
12. How satisfactory has the performance been of the Criminal Cases Review Commission?

REFORM

1. What have been the results so far of Lord Justice Auld's Criminal Courts Review?

EXAM QUESTIONS

1. *Answer both parts.*
 - (a) Explain the rights of appeal in criminal cases available to the prosecution and defence. (30 marks)
 - (b) Consider to what extent these rights of appeal are adequate for preventing miscarriages of justice. (20 marks)

(OCR, May 1999)

2. Gavin is due to be tried at Amcaster Crown Court for robbery of £7,000 from a bank.
 - (a) If he is found guilty what appeal routes are open to him? [10 marks]
 - (b) What appeal rights are available to the prosecution? [15 marks]
 - (c) Is this system of appeals satisfactory? [25 marks]

(Oxford Board, May 1996)

3. Jessica, aged 23, is charged with theft of a pair of jeans.
 - (a) Where and how can she get legal aid and advice, and what problems is she likely to encounter? [25 marks]
 - (b) Critically consider where her case will be tried. [12 marks]
 - (c) If she is convicted what appeal routes are available to her? [13 marks]

(Oxford Board, May 1995)

4. Bill Sykes is charged with manslaughter.
 - (a) Explain to him the sequence of events that will occur after he is charged up to and including his trial. [25 marks]
 - (b) Critically examine the process of selection of the jury for the trial. [25 marks]

(Oxford Board, May 1994)

5.
 - (a) Explain the criminal appeal system from the Magistrates' Court and the Crown Court.
 - (b) To what extent should this appeal system be reformed?

(Oxford Board, May 1993)

6. Is our system of criminal justice in the Crown Court and the Magistrates' Courts satisfactory?
(Oxford Board, May 1992)

7. Jeremy, aged 40, is alleged to have stolen £60,000 from his employer, Katherine.

- (i) In what courts may Jeremy be prosecuted? What are the implications if one court is chosen rather than another? [18 marks]
- (ii) If he is convicted of theft, to what courts may he appeal, assuming that he takes every opportunity of appealing open to him? [18 marks]
- (iii) If he is acquitted, or convicted and given what the prosecution regards as a light sentence, how can the prosecution have the acquittal or sentence appealed against or reviewed? [14 marks]

(Oxford Board, May 1991)

PRINCIPLES OF SENTENCING

WHAT YOU NEED TO RESEARCH

Aims of sentencing: purpose and effect of sentences; reoffending rates.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 11
Elliott & Quinn, *English Legal System*, chapter 10

PROGRESS TEST

1. Make revision notes on the following aims of sentencing:
Retribution,
Denunciation,
Incapacitation/Protection of the Public,
Deterrence,
Rehabilitation, and
Reparation.
2. What is the sentencing practice in the courts?
3. Consider penal policies and their effects (Martin, p188).
4. What has been the state of the prison population?
5. Have there been serious disturbances within prisons?
6. Is there any evidence of racism in sentencing?
7. How have women been treated by the sentencing process?

POWERS OF COURTS

WHAT YOU NEED TO RESEARCH

An understanding of the different types of sentences; e.g. custodial, community, fines and discharges; compensation and other powers.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 11
Elliott & Quinn, *English Legal System*, chapters 10 and 11

PROGRESS TEST

1. What reforms were enacted in the Powers of the Criminal Courts (Sentencing) Act 2000?
2. What custodial sentences are available for adult offenders?
3. What custodial sentences are available for young offenders?
4. What community sentences may be imposed on offenders aged 16 and over?
5. What other sentences are available for dealing with young offenders? (Martin, p184-7)
6. What types of fines may be imposed?
7. What is a discharge?
8. What is binding over?
9. Can a person be disqualified from driving?
10. What sentencing powers are available for dealing with mentally ill offenders?
11. What other powers do the courts have to compensate victims and/or make sure that the defendant does not benefit from a crime?

EXAM QUESTIONS

1. Evaluate whether retribution should be the main aim of the criminal justice system when offenders are sentenced. Support your arguments by reference to different types of sentence.

(OCR, June 2000)

2. Andy, aged 23, has been found guilty in the Donbridge Crown Court of assaulting Ben and causing him serious injuries.

(a) Briefly explain the types of sentences available in his case (15 marks)

(b) Discuss how and why the court would decide which sentence to impose upon him. (35 marks)

(OCR, May 1999)

3. Consider how the various sentences available to the courts for dealing with criminal offenders may be used to promote different sentencing aims.

(Oxford Board, May 1998)

4. On the same day two defendants appear in separate cases at the Oxbridge Crown Court.

Ben has been found guilty of stealing a pair of trainers from a shop. He is aged 22, unemployed, unmarried and lives with his mother. He has one previous conviction for theft when he was aged 19.

Jim has pleaded guilty to stealing £75,000 from the firm where he works as an accountant. He is aged 31 and married with three children. He has no previous convictions.

(a) What sentencing powers has the judge to deal with adult offenders such as these?

(b) What factors would the judge take into account in determining the appropriate sentences in each of these cases?

(Oxford Board, May 1997)

5. Is uniformity of sentences the most important aim in sentencing?

(Oxford Board, May 1996)

6. Bernard, aged 16, is convicted by the Midshire Youth Court of causing criminal damage.

(a) What sentencing powers does the court have in respect of him?

(b) Why are there differences in the sentences available for young offenders and adult offenders?

(Oxford Board, May 1995)

7. Consider critically the sentencing reforms introduced by the Criminal Justice Act 1991.
(Oxford Board, May 1994)

8. "The first objectives of punishment should be denunciation of and retribution for the crime."
Should these be the main aims when sentencing offenders?
(Oxford Board, May 1993)

9. James, aged 20, is charged with assaulting David and causing him actual bodily harm. James intends pleading guilty in the Erewhon Magistrates' Court.
 - (a) What powers do the magistrates have to deal with him?
and
 - (b) Are those powers satisfactory?(Oxford Board, May 1992)

10. Critically examine the principles on which both
 - (a) adult offenders, and
 - (b) juvenile offendersare dealt with by the Criminal Courts.
(Oxford Board, May 1991)

JUDICIARY

WHAT YOU NEED TO RESEARCH

Appointment; tenure; independence; role, including role in judicial review and enforcement of human rights in outline; role of the Lord Chancellor.

The theory of the separation of powers.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 13

Elliott & Quinn, *English Legal System*, chapter 3

PROGRESS TEST

APPOINTMENT AND ROLE

1. Who are the superior judges?
2. What are the specific judicial posts?
3. Who are the inferior judges?
4. Who appoints judges?
5. Where can the qualifications for the different judicial posts be found?
6. How are superior judges appointed?
7. How are the Law Lords appointed?
8. How are Lords Justices of Appeal appointed?
9. How are High Court judges appointed?
10. How are inferior judges appointed?
11. How are Circuit judges appointed?
12. How are Recorders appointed?
13. How are District judges appointed?
14. How are Stipendiary magistrates appointed?
15. Make notes on the criticisms of the composition of the Bench.
16. Make notes on the training that judges receive.
17. What reforms could be made to the appointment of the judiciary?

TENURE

18. Why is it important that judges should be free from political interference?
19. What security of tenure do superior judges have?
20. What security of tenure do inferior judges have?
21. When must judges retire?

JUDICIAL INDEPENDENCE

22. What is the doctrine of the separation of powers?
23. How is the judiciary independent from the legislature?
24. How is the judiciary independent from the executive?
25. How are judges protected from outside pressure?
26. What is the evidence that judges are not free, or are free, from political bias?

ROLE OF LORD CHANCELLOR

27. How is the position of the Lord Chancellor in contradiction to the doctrine of the separation of powers?
28. Have past Lord Chancellors been highly involved in politics?
29. What administrative functions does the Lord Chancellor have?
30. What criticisms have been made of the present system of the administration of justice?
31. What are the arguments for and against a Ministry of Justice?

EXAM QUESTIONS

1. Critically examine whether the role of the Lord Chancellor is in conflict with the doctrine of the separation of powers.

(OCR, May 1999)

2. Critically consider the possible effect of recent reforms to the appointment and training of judges.

(Oxford Board, May 1996)

3. How true is it to say that the Lord Chancellor's position is in conflict with the principle of judicial independence?

(Oxford Board, May 1995)

4. "Their ignorance of whole areas of British life is shattering. They receive no training whatever which might help them recognise and overcome their prejudices." (Lord Gifford)

In the light of this statement discuss the appointment and training of judges.

(Oxford Board, May 1994)

5. (a) To what extent is the office of Lord Chancellor an out of date relic from the past? [25]
(b) What would be the advantages of creating a Ministry of Justice? [25 marks]

(Oxford Board, May 1993)

6. Can true independence ever be achieved under the present method of appointment?

(Oxford Board, May 1992)

BARRISTERS AND SOLICITORS

WHAT YOU NEED TO RESEARCH

Training; work; supervisory role of Bar Council and Law Society.
Role of para-legals in outline.
Legal Services Ombudsman.
Crown Prosecution Service: role; personnel; Director of Public Prosecutions.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 12 and for the CPS, chapter 9.3
Elliott & Quinn, *English Legal System*, chapter 4 and for the CPS, p60

PROGRESS TEST

SOLICITORS AND BARRISTERS

1. Make notes on the training of solicitors.
2. What criticisms have been made of the training process?
3. What types of work are solicitors usually involved in?
4. What role is played by solicitors in conveyancing?
5. What rights of advocacy do solicitors hold?
6. Can solicitors form multi-discipline partnerships?
7. Can a solicitor be sued for negligence?
8. Can official complaints be made against solicitors? (Consider the role of the Solicitors' Complaints Bureau and the Office for the Supervision of Solicitors)
9. What role is played by the Legal Services Ombudsman?
10. Make notes on the training of barristers.
11. What types of work are barristers usually involved in?
12. What are Queen's Counsel?
13. Can a barrister be sued for negligence?
14. Can official complaints be made against barristers?
15. What role is played by the Legal Services Ombudsman?
16. What would fusion of the legal profession involve?
17. What are the advantages of fusion?
18. What are the disadvantages of fusion?
18. Have women in the legal profession suffered from discrimination?

20. Have ethnic minorities in the legal profession suffered from discrimination?
21. Who are Legal Executives?

CROWN PROSECUTION SERVICE (CPS)

22. Why was the CPS created?
23. How is the CPS organised?
24. What are the functions of the CPS?
25. What factors are taken into account when deciding whether to prosecute?
26. What criticisms have been made of the discontinuance of cases by the CPS?
(Consider the results of the CPS Annual Report 1994)
27. Has the revised code of practice (1994) been successful?
28. What were the results of the Glidewell Report (June 1998)?

REFORM

29. What proposals for reform have recently been made/enacted?

EXAM QUESTIONS

1. Since 1990 there have been many changes to both the legal profession and the provision of legal services. Explain these changes and critically discuss whether they have improved access to justice for the ordinary person.

(OCR, June 2000)

2. (a) Describe and comment critically on both the training and work of solicitors. [35 marks]
(b) How can dissatisfied clients complain about their solicitors and are these procedures adequate? [15 marks]

(Oxford Board, May 1997)

3. To what extent are the reforms of the legal profession over the last decade satisfactory? What other reforms, if any, could be justified?

(Oxford Board, May 1995)

4. To what extent is it true that the lines of demarcation between the legal professions have become increasingly blurred?

(Oxford Board, May 1994)

5. Have the recent reforms of the legal profession improved its organisation and achieved more satisfactory results for consumers of legal services?

(Oxford Board, May 1993)

5. Does the present system of legal education and training provide the lawyers that this country needs?

(Oxford Board, May 1991)

LAY MAGISTRATES

WHAT YOU NEED TO RESEARCH

Appointment; social background; training; role; evaluation and criticism.
Role of the magistrates' clerk in outline.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 14
Elliott & Quinn, *English Legal System*, chapter 6

PROGRESS TEST

1. How many lay magistrates are there?
2. What are the qualifications to become a lay magistrate?
3. Who are not eligible to be appointed as lay magistrates?
4. What are the qualifications to become a stipendiary magistrate?
5. How are lay magistrates appointed?
6. What was the directive that Lord Gardiner LC issued in 1966?
7. What has the current Lord Chancellor, Lord Irvine said on this matter?
8. How is the present composition of the bench perceived?
9. What are the duties of magistrates?
10. What training do lay magistrates receive?
11. When must magistrates retire?
12. When can the Lord Chancellor remove a magistrate?
13. What is the role of the magistrates' clerk?
14. Consider the advantages and disadvantages of lay magistrates?
15. What is a District Judge (Magistrates' Court)?

EXAM QUESTIONS

1. With reference to **both** juries and lay magistrates, discuss whether the participation of lay people in the legal system is desirable.

(OCR, May 1999)

2. "Two major criticisms may be made about lay magistrates. These are, first, that the method of selection does not produce a balanced bench and, second, that their training is inadequate for the work they are required to do."

To what extent are these criticisms justified?

(Oxford Board, May 1998)

3. 'The common criticism is that both magistrates and juries produce "amateur" justice, getting too many decisions wrong.' (Dugdale *et al*)

With reference to the above statement compare and contrast the role of magistrates and juries.

(Oxford Board, May 1995)

4. Are lay magistrates required to play too great a role in our legal system?

(Oxford Board, May 1993)

JURIES

WHAY YOU NEED TO RESEARCH

Qualifications of jurors; selection of jury panels; role in criminal and civil cases; evaluation and criticism
Alternatives to jury.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 14.2
Elliott & Quinn, *English Legal System*, chapter 5

PROGRESS TEST

1. Consider the history of the jury system.
2. How often are juries used in criminal and civil cases?
3. When are juries used in Coroners' courts?
4. What are the qualifications for jury service?
5. When will a person be disqualified from jury service?
6. Which groups of people are ineligible for jury service?
7. Who can be excused from jury service as of right?
8. When can a person be excused from jury service at the discretion of the court?
9. Can a judge discharge a juror for lack of capacity?
10. How are a jury selected?
11. What are the two types of jury vetting?
12. What challenges can be made to one or more of the jurors?
13. What criticisms have been made of the selection of juries?
14. What is the jury's role in criminal cases?
15. Consider the advantages and disadvantages of jury trial.
16. What are the special problems of using juries in civil cases?
17. What alternatives are there to trial by jury?
18. What proposals for reform have recently been made/enacted?

EXAM QUESTIONS

1. With reference to **both** juries and lay magistrates, discuss whether the participation of lay people in the legal system is desirable.

(OCR, May 1999)

2. What arguments could be put forward in favour of abolishing juries in both civil and criminal cases?

(Oxford Board, May 1997)

3. Would the quality of criminal justice be improved by abolishing the use of juries in criminal courts?

(Oxford Board, May 1996)

4. “The common criticism is that both magistrates and juries produce ‘amateur’ justice, getting too many decisions wrong.” (Dugdale *et al*)

With reference to the above statement compare and contrast the role of magistrates and juries.

(Oxford Board, May 1995)

5. Bill Sykes is charged with manslaughter.

(a) Explain to him the sequence of events that will occur after he is charged up to and including his trial. [25 marks]
(b) Critically examine the process of selection of the jury for the trial. [25 marks]

(Oxford Board, May 1994)

6. “We believe that twelve persons selected at random are likely to be a cross-section of the people as a whole and thus represent the views of the common man.”
(Lord Denning MR in *R v Sheffield Crown Court ex parte Brownlow* (1980))

Does this provide a satisfactory justification for trial by jury in criminal cases?
Is there any other satisfactory justification?

(Oxford Board, May 1991)

PROVISION OF LEGAL SERVICES

WHAT YOU NEED TO RESEARCH

Government funding: Legal Aid Board/Legal Services Commission; Community Legal Service; Criminal Defence Service; funding of civil and criminal cases; advice schemes in civil and criminal cases. Access to Justice.

Advice agencies: Purpose and role of Citizens' Advice Bureaux; law centres; other advice agencies in outline only.

Role of legal profession: Private funding of cases; conditional fees.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 15

Elliott & Quinn, *English Legal System*, chapter 8

PROGRESS TEST

GOVERNMENT FUNDING

1. What are the main difficulties for a person seeking legal assistance?
2. What were the main general principles of the Rushcliffe Committee report in 1945?
3. Explain the three periods of the development of the Government scheme of legal aid and advice?
4. What did the Access to Justice Act 1999 do?
5. What is the Legal Services Commission?
6. What is the Community Legal Service?
7. What is the Community Legal Service Fund?
8. Which matters cannot be funded by the Community Legal Services Fund.
9. Who will funding priority be given to?
10. What is the funding criteria? Explain the financial limits, the criteria for funding and the merits of the case.
11. What are conditional fees?
12. What is the Police Station Duty Solicitor Scheme?
13. What criticisms have been made of the Police Station Duty Solicitor Scheme?
14. How do Duty Solicitors operate at the Magistrates' Courts?
15. How does the Criminal Legal Aid scheme work?
16. Explain the merits test.
17. What criticisms have been made of the merits test?
18. Explain the means test and any criticisms made of it.

19. What criticisms have been made of the Criminal Legal Aid scheme?
20. What is the Criminal Defence Service?

ADVICE AGENCIES

1. Which other bodies provide legal advice and help?
2. Explain the working of the Citizens' Advice Bureaux.
3. What comments did the Benson Commission (1979) make?
4. How do Law Centres operate?
5. What are the advantages and disadvantages of Law Centres?
6. Explain the following schemes run by lawyers:

Cheap/free interview,
ALAS,
Free Representation Unit,
Conditional Fees.

EXAM QUESTIONS

1. Since 1990 there have been many changes to both the legal profession and the provision of legal services. Explain these changes and critically discuss whether they have improved access to justice for the ordinary person.

(OCR, June 2000)

2. Explain to the following three people what problems they may have in obtaining legal aid and advice.

(a) Amrit, who wishes to claim for unfair dismissal. Amrit has not been able to find another job and is still unemployed.

(b) Ben, a pensioner, who wishes to claim damages for injuries he suffered in a road traffic accident.

(c) Caroline, an 18 year old student, who has been charged with the theft of a personal stereo set from a local shop.

(Oxford Board, May 1998)

3. What particular problems do defendants in criminal cases have in obtaining legal aid and advice? How could the system be improved?

(Oxford Board, May 1997)

4. What reforms could be suggested for improving the legal aid and advice scheme?

(Oxford Board, May 1996)

5. Jessica, aged 23, is charged with theft of a pair of jeans.

(a) Where and how can she get legal aid and advice, and what problems is she likely to encounter? [25 marks]

(Oxford Board, May 1995)

6. "Financial constraints on legal aid and advice schemes have severely limited access to justice."

Discuss.

(Oxford Board, May 1994)

7. Ebenezer Scrooge alleges he has been defamed by an article in a newspaper.

(a) Advise him whether he can obtain legal aid and advice. [5 marks]

(Oxford Board, May 1993)

8. Brown has been involved in a road traffic accident with Green, as a result of which the police have charged Brown with dangerous driving and Green has started civil proceedings against Brown claiming damages in excess of £100,000.

(a) Advise brown as to how he may obtain legal aid and advice. [25 marks]

and

(b) Do you think that such provisions for legal aid and advice are adequate? [25 marks]

(Oxford Board, May 1992)

9. "It is for Parliament to decide the extent to which legal services are to be provided at public expense to meet the needs of the majority of the population. But, unless legal services are provided, the full benefit of our legal rights cannot be realised."
(Royal Commission on Legal Services (1976))

Discuss, with reference both to criminal and civil law.

(Oxford Board, May 1991)

DOCTRINE OF PRECEDENT

WHAT YOU NEED TO RESEARCH

Mechanics of precedent: Precedent as operated in the English Legal System; *stare decisis*; *obiter dicta*, *ratio decidendi*; hierarchy of the courts; binding and persuasive precedent; overruling; reversing; distinguishing.

Law-making potential: Original precedent; the Practice Statement 1966; distinguishing; the role of the judges.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 2.4

Elliott & Quinn, *English Legal System*, chapter 1 p6

PROGRESS TEST

1. What is judicial precedent?
2. What is the meaning of *stare decisis*?
3. What is the *ratio decidendi* of a judicial decision?
4. What is an *obiter dictum*?
5. Consider the difference between a binding precedent and a persuasive precedent.
6. Explain the system of precedent in relation to the hierarchy of the courts (especially, the House of Lords and the Court of Appeal).
7. What is the method of distinguishing?
8. What is overruling?
9. What is reversing?
10. When will a decision have been given *per incuriam*?
11. What were the reasons for the Practice Statement (1966)?
12. Consider the examples of judicial law making and social change.
13. Under what circumstances have the House of Lords refused to make law?
14. Consider the guidelines in *C v DPP* (1995).
15. Give recent examples of judicial law-making.
16. Compare the system of precedent with any other legal system.
17. Consider the advantages and disadvantages of precedent.
18. What is the layout of a law report like?

EXAM QUESTIONS

1. 'The system of judicial precedent permits both flexibility and stability in the law.' Explain and comment on how precedent achieves both these aims.

(OCR, June 2000)

2. See Data Paper, Q1

(OCR, May 1999)

3. 'In legal matters, some degree of certainty is at least as valuable a part of justice as perfection.' (Lord Hailsham in *Cassell & Co Ltd v Broome* (1972))

In the light of this quotation critically discuss the system of judicial precedent as operated in the English Legal System.

(Oxford Board, May 1998)

4. See Data Paper, Q2

(OCR, May 1997)

5. Evaluate the statement that "precedent is a useful tool but a bad master".

(Oxford Board, May 1996)

6. "It is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords."
(Lord Hailsham in *Cassell v Broome* (1972))

Discuss the system of precedent in the light of this quotation.

(Oxford Board, May 1995)

7. "The judge is a designer as much as a technician. He creates the common law in the process of seeking it." (Dugdale *et al.*)

Discuss with reference to judicial precedent.

(Oxford Board, May 1994)

8. Do the strengths of the English system of judicial precedent outweigh its weaknesses?

(Oxford Board, May 1993)

9. “Of course we must have a general doctrine of precedent - otherwise we can have no certainty. But we must find a middle way which prevents precedent from being our master.”
(Lord Reid, in a lecture (1972))

Discuss.

(Oxford Board, May 1992)

10. “Whilst this court should regard itself as normally bound by a previous decision of the court, nevertheless it should be at liberty to depart from it if it is convinced that the previous decision was wrong.”
(Lord Denning MR, in *Davis v Johnson* (1978))

Critically evaluate this opinion of the position respecting any appellate court in the English Legal System.

(Oxford Board, May 1991)

ACTS OF PARLIAMENT

WHAT YOU NEED TO RESEARCH

Green papers, White papers, legislative stages in Parliament.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 3
Elliott & Quinn, *English Legal System*, chapter 1, p26

ADDITIONAL INFORMATION

The concept of parliamentary sovereignty means that Parliament is the supreme legal authority in the UK. In many countries, for example, the USA, the legislature is limited by the constitution in the laws it can or cannot make. The US Supreme Court can declare laws passed by the legislature to be unconstitutional and therefore invalid. However, the traditional view in the UK is that Parliament is subject to no such legal limitation and that the UK courts have no power to declare laws duly passed by Parliament invalid.

According to Dicey (a nineteenth century writer on the British constitution), "In theory Parliament has total power. It is sovereign." Dicey's view of parliamentary sovereignty consisted of four factors:

- (1) Parliament is competent to pass laws on any subject;
- (2) Parliament's laws can regulate the activities of anyone, anywhere;
- (3) Parliament cannot bind its successors as to the content, manner and form of subsequent legislation; and
- (4) Laws passed by Parliament cannot be challenged by the courts.

PROGRESS TEST

1. What is the concept of parliamentary sovereignty?
2. What are Acts of Parliament?
3. Consider the pre-legislative procedure.
4. How are Acts of Parliament introduced?
5. Consider the process in Parliament.
6. How did the Disability Discrimination Act 1995 eventually become law?
7. What criticisms can be made of the legislative process?

EXAM QUESTIONS

1. See Data Paper, Q2, May 1998.

DELEGATED LEGISLATION

WHAT YOU NEED TO RESEARCH

Orders in Council; statutory instruments; bylaws; control of delegated legislation; reasons for delegating legislative powers.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 3.2
Elliott & Quinn, *English Legal System*, chapter 1, p51

PROGRESS TEST

1. What is delegated legislation?
2. What are the three different types of delegated legislation?
3. Why is delegated legislation necessary?
4. How is delegated legislation controlled by:
 - (a) Parliament
 - (b) The courts?
5. What criticisms can be made of delegated legislation?

EXAM QUESTIONS

1. Delegated legislation is an undemocratic method of law-making.' In the light of this quotation discuss the different types of delegated legislation.

(OCR, June 2000)
2. See Data Paper, Q2, May 1998.
3. Why is it necessary to have controls over delegated legislation? Are the present controls satisfactory?

(Oxford Board, May 1996)
4. "Delegated legislation is an increasingly important source of law, but one which can lead to abuse of the principle of democratic law making."

Critically evaluate this statement.

(Oxford Board, May 1993)

STATUTORY INTERPRETATION

WHAT YOU NEED TO RESEARCH

Literal rule, Golden rule, Mischief rule, purposive approach; rules of language; presumptions; intrinsic and extrinsic aids; effect of membership of the European Union on interpretation.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 3.3
Elliott & Quinn, *English Legal System*, chapter 1, p29

PROGRESS TEST

1. Why may the meaning of an Act of Parliament be unclear?
2. What is the literal rule of interpretation?
3. Give an example.
4. What is the golden rule of interpretation?
5. Give an example.
6. What is the mischief rule?
7. Give an example.
8. Which is better: the literal approach or the purposive approach, to statutory interpretation?
9. Giving examples, what are the three rules of language?
10. What presumptions about the law will a judge make?
11. What intrinsic aids can a judge use to help explain the meaning of an Act?
12. What extrinsic aids can a judge use to help explain the meaning of an Act?
13. How useful is Hansard, in interpreting statutes?
14. What are explanatory notes?
15. How must English law, based on European law, be interpreted?

EXAM QUESTIONS

1. See Data Paper, Q2, June 2000.
2. See Data Paper, Q2, May 1999.
3. See Data Paper, Q1, May 1998.
4. See Data Paper, Q1, May 1997.

5. “The English courts must follow the European pattern. No longer must they examine the words in meticulous detail. No longer must they argue about the precise grammatical sense. They must look to the purpose or intent.”
(Lord Denning in *Bulmer v Bollinger* (1974))

To what extent do you agree that judges should use the European purposive approach when interpreting statutes in the English courts?

(Oxford Board, May 1996)

6. “Statute law consists of the words that Parliament has enacted. It is for the courts to construe those words and it is the court's duty in so doing to give effect to the intention of Parliament in using those words.”
(Lord Browne-Wilkinson in *Pepper v Hart* (1992))

How do the courts go about discovering the intention of Parliament when interpreting Acts of Parliament?

(Oxford Board, May 1995)

7. “The law has to be interpreted before it can be applied and interpretation is a creative activity.”
(Lord Radcliffe)

Discuss with reference to statutory interpretation.

(Oxford Board, May 1993)

8. “Some may say ... that judges should not pay any attention to what is said in Parliament. They should grope about in the dark for the meaning of an Act without switching on the light.”
(Lord Denning MR, in *Davis v Johnson* (1978))

Discuss with reference to statutory interpretation.

(Oxford Board, May 1992)

9. “When Parliament legislates ... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.”
(Lord Diplock, in *Duport Steels Ltd v Sirs* (1980))

Discuss.

(Oxford Board, May 1991)

EUROPEAN LAW

WHAT YOU NEED TO RESEARCH

Institutions: The law making functions of the Council, Commission, Parliament; the role and composition of the European Court of Justice.

Primary and secondary sources: Treaties, regulations, directives and decisions; their implementation by the courts; the impact of European Union law on domestic legal institutions and law.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 4

Elliott & Quinn, *English Legal System*, chapter 1, p59

PROGRESS TEST

1. Consider the roles of the four institutions of the European Community.
2. Consider the European Union's law-making process.
3. What are treaties?
4. What are regulations?
5. What are directives?
6. What is the principle of direct applicability?
7. What is the principle of direct effect?
8. What happens if there is a conflict between European Law and National Law?
9. What has been the effect of European law on English law and parliamentary sovereignty?

EXAM QUESTIONS

1. See Data Paper, Q1, June 2000.

2. Critically consider how membership of the European Union affects the law in England and Wales.

(OCR, May 1999)

3. Explain what is meant by the terms 'vertical effect' and 'horizontal effect' in connection with European law, and evaluate their importance in English law.

(Oxford Board, May 1997)

4. How important an effect does the principle of direct applicability in European Community law have on domestic English law?

(Oxford Board, May 1994)

5. Critically discuss the effect entry into the European Community has had on the sovereignty of Parliament.

(Oxford Board, May 1992)

6. How far has both the making of law and its interpretation been affected by the United Kingdom's membership of the European Communities?

(Oxford Board, May 1991)

LAW REFORM

WHAT YOU NEED TO RESEARCH

Impetus for law reform: The role of Parliament; the role of the judges; effect of public opinion and pressure groups.

Law reform agencies: The role of the Law Commission; Royal Commissions and other agencies in outline.

RECOMMENDED READING

Jacqueline Martin, *The English Legal System*, chapter 5

Elliott & Quinn, *English Legal System*, chapter 2

PROGRESS TEST

1. What is the role of the Law Commission?
2. Has the work of the Law Commission been successful?
3. What is the role of Royal Commissions?
4. Give examples of the work of Royal Commissions.
5. Consider the role and work of the Law Reform Committee.
6. Consider the role and work of the Criminal Law Revision Committee.
7. How can public opinion and pressure groups influence law reform?

EXAM QUESTIONS

1. See Data Question 1
(OCR 1999)
2. Critically evaluate the role of law reform bodies.
(Oxford Board, May 1995)
3. "It shall be the duty of ... the Commissions to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law."
s3 Law Commissions Act 1965

Should the Law Commission concentrate on codification or are there more suitable ways of reforming the law?

(Oxford Board, May 1992)

OCR

2568

Advanced Subsidiary GCE

LAW

DESCRIPTOR

Unit 1 : Machinery of Justice

date of examination

1 hour 15 mins

Additional materials:
Answer paper

TIME 1 hour 15 mins

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer paper/answer booklet.

Write your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for accurate spelling, punctuation and grammar.

Answer two questions

1. (a) Describe the main civil courts and their jurisdiction. [30 marks]
(b) Discuss the problems of making a claim in the civil courts. [15 marks]
2. (a) Describe the main sentences available to the courts. [30 marks]
(b) Explain the different aims of sentencing. [15 marks]
3. Gavin is due to be tried at Amcaster Crown Court on a charge of robbery.
(a) If he is found guilty what appeal routes are open to him? [30 marks]
(b) Compare the rights of appeal of the prosecution with those of the defence. [15 marks]
4. Desmond, aged 26, has been arrested by the police on suspicion of murder.
(a) Describe the police powers in respect of detention, body searches and interview at the police station in such a case. [30 marks]
(b) Advise Desmond of his rights while he is detained. [15 marks]

OCR

2569

Advanced Subsidiary GCE

LAW

DESCRIPTOR

Unit 2 : Legal Personnel

date of examination

1 hour 15 mins

Additional materials:
Answer paper

TIME 1 hour 15 mins

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer paper/answer booklet.

Write your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for accurate spelling, punctuation and grammar.

Answer two questions

1. (a) Describe and comment on the training and work of solicitors. [30 marks]
(b) Explain and comment on the supervisory role of:
(i) the Law Society;
(ii) the Legal Service's Ombudsman. [15 marks]
2. (a) Explain the theory of the separation of powers. [15 marks]
(b) To what extent can it be said that the Lord Chancellor's role is in conflict with the theory of the separation of powers? [30 marks]
3. (a) Describe the selection, training and role of lay magistrates. [30 marks]
(b) Discuss the advantages and disadvantages of using lay magistrates in the English Legal System. [15 marks]
4. (a) Explain how a person in a criminal case can obtain legal advice and representation. [30 marks]
(b) Discuss the problems a person might encounter in trying to obtain legal advice and representation in a criminal case. [15 marks]

OCR

2570

Advanced Subsidiary GCE

LAW

DESCRIPTOR

Unit 3 : Sources of Law

date of examination

1 hour 15 mins

Additional materials:
Answer paper

TIME 1 hour 15 mins

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer paper/answer booklet.

Write your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **one** question.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for accurate spelling, punctuation and grammar.

Answer **one** question only.

1. Read the following source of material and answer questions (a) to (d) which follow.

Exercise on law Reform and Judicial Precedent

SOURCE A

In *Schorsch Meier GmbH v Hennin* the German company sued and asked for judgment in Deutschmarks. The judge refused. The company appealed. There was a decision of the House of Lords only fourteen years before (*Re Havana Railways*) which held that an English court could only give judgment in sterling. The Court of Appeal ought to have followed the *Havana* case. We turned a blind eye. We were guilty of what Lord Wilberforce afterwards described as "some distortion of the judicial process". We gave judgment in Deutschmarks.

In *Miliangos v George Frank Textiles* the Swiss firm saw the report in the Times of the *Schorsch v Hennin* case. Counsel amended his claim and asked for judgment in Swiss Francs. The case reached the House of Lords. The House themselves overruled the *Havana* case for it was only by doing so that they could give judgment in Swiss Francs.

It was a decision of the greatest importance. But it only came about because we were guilty of a 'distortion of the judicial process'. If in *Schorsch* we had held ourselves bound by *Havana*, in *Miliangos* the Swiss firm would automatically have taken judgement in sterling [and] would not have appealed. The House of Lords would never have had the opportunity of overruling the *Havana* case.

(Adapted from, *The Discipline of Law*, Lord Denning, Butterworths)

SOURCE B

There can be no doubt that the institution of the Law Commission marks a great step forward in the process of law reform. [This] will mean that the importance of judicial law-making, which has been dwindling now for a century or more, will probably almost entirely vanish but without, I hope, dimming the name and reputation of Lord Denning, who will stand for future generations as the last great judicial innovator.

(Adapted from, 'The Process of Law Reform', Lord Devlin, *Law Society Gazette*, 1966)

- (a) Refer to Source A. Explain how the doctrine of precedent usually works. [36]
- (b) Refer to Source B. Describe the character and role of the Law Commission. [36]
- (c) Discuss the ways in which a judge of the Court of Appeal is able to reform the law. [24]
- (d) *Re Havana Railways* was decided by the House of Lords in 1961. *Miliangos* reached the House of Lords in 1975.
- (i) Explain the doctrine which allowed the House of Lords to overrule its precedent in the earlier case.
- (ii) How, if at all, would their answer have differed if *Miliangos* had come before the House of Lords in 1965? [24]

Total: 120 marks

Read the following extract and answer parts (a) to (c) which follow.

Exercise on Statutory Interpretation

The case of *R v Maginnis* [1987] 1 All ER 907, HL, was concerned with the Interpretation of the Misuse of Drugs Act 1971, by s. 5(3) of which:

“...it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply to another ... “

The police had found a package of cannabis resin in the defendant's car. He said that the package was not his but had been left in his car by a friend for collection later. The defendant was convicted and appealed...

[In the House of Lords] their Lordships held that the defendant was guilty of the offence because a person in unlawful possession of a controlled drug left with him for safekeeping by another person had the necessary 'intent to supply it to another' (even though the supply was not being made from the provider's own resources) if his intention was to return it to the other person and for that other person's purposes.

The majority of their Lordships purported to apply the ordinary, natural meaning of the word 'supply'. Lord Goff of Chieveley, however, dissented on that very point and referred to definitions of the word given in *The Shorter Oxford English Dictionary*. In his view the word 'supply' was not apt to describe a transaction in which A handed back to B goods which B had previously left with A. Thus the cloakroom attendant, left luggage officer, warehouseman and shoe repairer do not, in ordinary parlance, 'supply' their customers. Lord Goff was further of the opinion that the particular offence in question was aimed at drug 'pushers'; the defendant was not a pusher' and should have been charged with the lesser offence of 'unlawful possession'. If, he said, persons in the position of the defendant were to be convicted of 'possession with intent to supply', it was up to Parliament and not the courts to enlarge the definition of 'supply'.

(Adapted from, *The English Legal Process*, Terence Ingman, Blackstones)

- (a) Refer to the Source. Using examples, explain the literal rule of statutory interpretation. [40]
- (b) Identify and explain other approaches to statutory interpretation that could have been used by the judges in *Maginnis*. [40]
- (c) Using your knowledge of the rules of statutory interpretation, consider whether each of the following has committed an offence by having '... a controlled drug in his possession, whether lawfully or not, with the intent to supply it to another... ' [lines 3-4 of the source]:
- (i) George has cannabis in his pocket which he intends to smoke with his girlfriend Hannah.
 - (ii) Simon, a doctor, has taken controlled drugs from his patient Tim, an addict, and is planning to deliver them to the police.
 - (iii) Annie is Bill's mother. One day Bill asks if she will keep a sealed brown paper package for him while he goes out. The package contains a kilogram of heroin. [40]

Total : 120 marks