

'AS' LEVEL LAW

ENGLISH LEGAL SYSTEM

STUDY GUIDE FOR SOURCES OF LAW (MODULE 2570)
2001-2002

ASIF TUFAL

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Module 2570 Sources of Law

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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, or
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?

FORMER OXFORD LINEAR SYLLABUS 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.

(June 2000)

2. See Data Paper, Q1

(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.

(May 1998)

4. See Data Paper, Q2

(May 1997)

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

(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.

(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.

(May 1994)

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

(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.

(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.

(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, or
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?

FORMER OXFORD LINEAR SYLLABUS 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, or 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?

FORMER OXFORD LINEAR SYLLABUS 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.

(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?

(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.

(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, or
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?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. 'The literal approach to statutory interpretation may sometimes lead to an absurd result, but it avoids the judicial law-making of the purposive approach.' Discuss.
(June 2001)
2. See Data Paper, Q2, June 2000.
3. See Data Paper, Q2, May 1999.

4. See Data Paper, Q1, May 1998.
5. See Data Paper, Q1, May 1997.
6. “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?

(May 1996)

7. “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?

(May 1995)

8. “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.

(May 1993)

9. “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.

(May 1992)

10. “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.

(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, or
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?

FORMER OXFORD LINEAR SYLLABUS 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.

(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.

(May 1997)

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

(May 1994)

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

(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?

(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, or
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?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. See Data Question 1
(OCR 1999)
2. Critically evaluate the role of law reform bodies.
(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?
(May 1992)

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

**OXFORD CAMBRIDGE AND RSA EXAMINATIONS
Advanced Subsidiary GCE**

LAW

2570

Unit 2570

Sources of Law

Wednesday

10 JANUARY 2001

Morning

1 hour 15 minutes

Additional materials:

8-page Answer Book

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

- Write your name, Centre number and Candidate number in the spaces provided on the answer paper/answer booklet.
- Answer **one** question.
- You are advised to spend approximately 15 minutes reading the questions.

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 90.
- **All questions should be answered in continuous prose. You are reminded, therefore, that you will be assessed on your ability to organise and present information and arguments logically and coherently, and to communicate clearly and accurately, taking into account grammar, punctuation and spelling.**

Answer **one** question, **either** Question 1 **or** Question 2.

1 Read the following Sources and answer parts (a) to (d) which follow.

Exercise on legislation and law reform
SOURCE A

For many years backbenchers tried to steer private members' Bills aimed at preventing discrimination against disabled people through Parliament. Until 1993-94 all such Bills had been defeated in the early stages. This demonstrates that, even where the Bill involves what many people would accept as sensible measures, it is difficult for a private member's Bill to succeed unless it has the backing of the government. However in the 1993-94 session of Parliament, the Civil Rights (Disabled Persons) Bill was introduced as a private member's Bill, and was successful up to, and including the Committee Stage, but was then defeated at the Report Stage. This defeat caused public outcry. The outcry was probably a main factor in the Government's decision to issue a Green Paper in July 1994, entitled 'A Consultation on Government Measures to Tackle Discrimination Against Disabled People'. This set out proposals for limited reform of the law so that discrimination against disabled people is prevented both in the labour market and in access to goods and services. One of the points for discussion was the definition of disability and who should and should not be included. A brief extract of the Green Paper on this point is set out below.

2.20 *The Government considered that a workable employment right should be based on a definition that:*

- *is confined to people who have a substantial and long -term disability or a disability which has substantial or long-term effects;*
- *in principle covers physical, sensory and mental impairments;*
- *is as straightforward and easy to interpret as possible.*

Following the consultation on the Green Paper the Government then published its firm proposals in a White Paper.

Adapted from: *The English Legal System*, Jacqueline Martin, Hodder & Stoughton

SOURCE B

"... physical or mental impairment which has a substantial long-term effect on ability to carry out normal day-to-day activities ..."

Definition of disabled in s1(1) Disability Discrimination Act 1995

Answer **all** parts.

- (a) Describe the process by which a Bill becomes an Act of Parliament. [24]
- (b) (i) Using the Source and other examples explain, and compare 'public Bills' and 'private members' Bills'.
(ii) Explain the terms 'Green Paper' and 'White Paper'. [30]
- (c) Explain how effective the law reform bodies or any other groups have been in persuading Parliament to reform the law. [24]
- (d) Consider whether any of the following individuals are suffering from a '... physical or mental impairment which has a substantial long-term effect on ability to carry out normal day-to-day activities...' so as to fall within the definition of disability in the Disability Discrimination Act 1995.
(i) Rachel, who has suffered severe brain damage in a car crash.
(ii) Monica, who is a cook and has developed a painful skin irritation which causes her hands to crack and blister.
(iii) Phoebe, who is a guitarist and is developing profound deafness in one ear. [12]

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

Exercise on judicial precedent

SOURCE A

Their Lordships ... recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from previous decisions when it appears right to do so.

In this connection they will bear in mind ... the especial need for certainty in the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this House.

Extract adapted from *The House of Lords Practice Statement 1966*

SOURCE B

Elliott v C [1983]

C, a 14 year old and somewhat backward girl spent an evening with a friend and, being unable to stay there the night decided to sleep in a shed. Finding some white spirit and matches she poured the spirit on the floor and set light to it, destroying the shed as a result when the fire got out of hand. The girl claimed that she had no idea that such damage would result.

Magistrates acquitted her under s1(1) Criminal Damage Act 1971 of 'recklessly' damaging property because of her age and lack of understanding. The prosecution then made a successful appeal by way of case stated to the Queen's Bench Divisional Court. This court applied the definition of recklessness given by Lord Diplock in the House of Lords in *Caldwell [1981]*. Lord Justice Goff in the Queen's Bench Division Court accepted that he was bound to apply the precedent from *Caldwell* to the case, but felt very unhappy about having to do so in the circumstances of the present case which he felt would be unfair on the girl.

In his judgment Lord Justice Goff said: "in my opinion, although of course the courts of this country are bound by the doctrine of precedent, sensibly interpreted, nevertheless it would be irresponsible for judges to act as automatons, rigidly applying authorities without regard to consequences. Where a judge is compelled to reach a conclusion he senses to be unjust or inappropriate, he is under a duty to examine the precedent with scrupulous care to ascertain whether he can, within the limits imposed by the doctrine of precedent legitimately interpret or qualify the principle in the precedent to achieve the result which he sees as just or appropriate in the particular case.'

Extract adapted from the judgment in *Elliott v C [1983]*

Answer **all** parts.

- (a) Using the sources and other examples explain what the doctrine of binding precedent is and how it operates within the court hierarchy. [40]
- (b) In source B, Lord Justice Goff suggests that judges should not “*act as automatons, rigidly applying authorities without regard to consequences*”. Using the sources and cases explain and comment on the ways in which a judge can avoid rigidly applying precedent. [38]
- (c) In a 2001 case of criminal damage an eleven-year-old boy has thrown down a lighted firework in a shop and has caused a fire destroying the shop. In each of the following situations consider whether the judges in the case should consider themselves bound by the precedents in *Caldwell* and *Elliott v C*:
- (i) The judge in the Queen's Bench Divisional Court feels that it would be unfair to convict the boy.
- (ii) The House of Lords judges unanimously consider that it would be unfair to convict the boy. [12]

**OXFORD CAMBRIDGE AND RSA EXAMINATIONS
Advanced Subsidiary GCE**

LAW

2570

Unit 2570

Sources of Law

Wednesday

13 JUNE 2001

Morning

1 hour 15 minutes

Additional materials:

8-page Answer Book

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

- Write your name, Centre number and Candidate number in the spaces provided on the answer paper/answer booklet.
- Answer **one** question.
- You are advised to spend approximately 15 minutes reading the questions.

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 90.
- **All questions should be answered in continuous prose. You are reminded, therefore, that you will be assessed on your ability to organise and present information and arguments logically and coherently, and to communicate clearly and accurately, taking into account grammar, punctuation and spelling.**

Answer **one** question, **either** Question 1 **or** Question 2.

1 Read the following Source and answer parts (a) to (d) which follow.

Exercise on Delegated Legislation

SOURCE

There are three main forms of delegated legislation: Statutory Instruments, Bye-laws, Orders in Council. While the validity of a statute can never be challenged by the courts delegated legislation can under the procedure for judicial review.

R v Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants (1996) concerned the Asylum and Immigration Appeals Act 1993 which provided a framework for determining applications for asylum. It allowed asylum seekers to apply for social security benefits while they were waiting for their applications to be decided, at a cost of £200 million per year to the British taxpayers. This led to concern that the provisions might attract those who were simply seeking a better lifestyle (often called economic migrants).

In order to discourage economic migrants, the Secretary of State for Social Security exercised powers to make delegated legislation under the Social Security (Contributions and Benefits) Act 1992 and produced regulations which stated that social security benefits would no longer be available to those who sought asylum after they had entered the UK, rather than immediately on entry, or those who had been refused leave to stay here and were awaiting the outcome of appeals against the decision.

The Joint Council for the Welfare of Immigrants challenged the regulations, claiming that they fell outside the powers granted by the Social Security (Contributions and Benefits) Act 1992. The Court of Appeal upheld their claim, stating that the Asylum and Immigration Appeals Act 1993 was clearly intended to give asylum seekers rights which they did not have previously. The effect of the regulations was effectively to take those rights away again, since without access to social security benefits, most asylum seekers would either have to return to the countries from which they had fled, or live on nothing while their claims were processed. The Court ruled that Parliament could not have intended to give the Secretary of State powers to take away the rights it had given in the 1993 Act: this could only be done in a new statute, and therefore the regulations were *ultra vires*.

Adapted from: *English Legal System*, Catherine Elliott and Frances Quinn, Longman

Answer all parts.

- (a) Describe and explain the **three** types of delegated legislation identified in the Source. (lines 1-2) [28]
- (b) Refer to the Source (lines 2-3):
- (i) Explain for what reasons delegated legislation can be challenged in the courts;
 - (ii) Describe the orders that can be made if that challenge is successful. [24]
- (c) With reference to the Source and your knowledge of delegated legislation, discuss the main advantages and disadvantages of delegated legislation. [26]
- (d) Using the Source and other cases, suggest whether the following situations might be subject to challenge in the courts:
- (i) Using powers of discretion given under a statute for applications for asylum the Home Secretary introduces a statutory instrument preventing applications for asylum from any immigrant entering from an Asian, African, or Latin American country.
 - (ii) An Act allows the Home Secretary to introduce statutory instruments to provide emergency accommodation for asylum seekers after first consulting local authorities and holding meetings with local residents. The Home Secretary, responding to a sudden influx of asylum seekers, erects a camp near to a town without consulting the local council or holding a public meeting. [12]

2 Read the following Source and answer parts (a) to (d) which follow.

Exercise on Statutory Interpretation

SOURCE

The case involves an appeal by way of case stated against conviction of an offence under s3 of the Official Secrets Act 1920, that, 'being in the vicinity of a prohibited place', namely Markham Royal Air Force Station, the defendant obstructed a member of Her Majesty's Forces engaged in security duty.

LORD PARKER CJ: s3 of the Official Secrets Act provides that:

'No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede [an] officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place... and if any person ... fails to comply ... he shall be guilty of [an offence].'

... the appellant had obtained access to, and was on Markham Royal Airforce Station, and it was found ... obstructed a member of [the] Royal Air Force.

The sole point here, and a point ably argued by the appellant, is that if he was on the station he could not be in the vicinity of the station, and that it is an offence under this section ... only while the accused is in the vicinity of the station. The appellant has referred to the natural meaning of 'vicinity', which I take to be quite generally the state of being near in space, and he says that it is inapt and does not cover being in fact on the station in the present case. For my part I am quite satisfied that this is a case where no violence is done to the language by reading the words 'in the vicinity of' as meaning 'in or in the vicinity of'. Here is a section in an Act of Parliament designed to prevent interference with, amongst others, members of Her Majesty's forces who are engaged on guard, sentry patrol or other similar duty in relation to a prohibited place such as this station. It would be extraordinary, and I venture to think that it would be absurd, if an indictable offence was thereby created when the obstruction took place outside the precincts of the station, albeit in the vicinity, and no offence at all was created if the obstruction occurred on the station itself. There may be of course many contexts in which 'vicinity' must be confined to its literal meaning of 'being near in space', but under this section, I am quite clear that the context demands that the words should be construed in the way which I have stated. I would dismiss this appeal.

Adapted from the judgment in *Adler v George* [1964]

Answer **all** parts.

- (a) Lord Parker in his judgment is using the golden rule to interpret the words 'in the vicinity of' in s3 of the Official Secrets Act. Using the Source and other cases, describe and explain the use of the golden rule. [24]
- (b) Lord Parker refers to the 'natural meaning' in the Source (line 16) and the 'literal meaning' in the Source (line 27). These are references to the literal rule of statutory interpretation. Using the Source and other cases, explain the literal rule and discuss the problems that can be created by using it. [36]
- (c) In the extract from s3 of the Official Secrets Act in the Source there is a reference to 'guard, sentry, patrol or other similar duty'. Identify what rule of language would be appropriate to this list and describe how it operates in practice. [12]
- (d) In the following situations use the Source and your knowledge of the rules of statutory interpretation, to explain whether or not the defendant would be guilty of the offence under s3 Official Secrets Act 1920 as a person who: *'in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede [an] officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place'*.
- (i) Gerald, an Eco-warrior and anti-nuclear protester, digs a tunnel immediately underneath a nuclear base and refuses to come out when sentries request that he should.
- (ii) As a result of being blown off course by a fierce wind, Henry, an amateur parachutist, lands on the roof of a building on a nuclear base. Frightened by the armed sentries, who race towards the building, he tries to hide from them.
- (iii) Isabella, a foreign spy, lures a soldier away from the gate at a nuclear installation so that her colleagues can get unseen onto the base. Unknown to Isabella the soldier is actually a cook who has just delivered supper to the sentries on guard. [18]