

**ADVANCED SUBSIDIARY GCE UNIT  
LAW**

Sources of Law

**MONDAY 15 JANUARY 2007**

**G142**

Afternoon

Time: 1 hour

Additional materials: Answer Booklet (8 pages)



**INSTRUCTIONS TO CANDIDATES**

- Write your name, Centre number and candidate number in the spaces provided on the answer booklet.
- Answer **one** question.
- Read each question carefully and make sure you know what you have to do before starting your answer.
- If you use additional sheets of paper, fasten these securely to the answer booklet.
- Write the number of the question you answer on the front of your answer booklet.

**INFORMATION FOR CANDIDATES**

- The number of marks is given in brackets [ ] at the end of each question or part question.
- The total number of marks for this paper is **60**.
- **Candidates are reminded of the need to write in continuous prose, where appropriate. You will be assessed on the quality of your written communication and your use of appropriate legal terminology (QWC).**

This document consists of **6** printed pages and **2** blank pages.

Answer **one** question.

- 1 Read the source material below and answer parts **1(a)** to **1(c)** which follow.

### Exercise on Statutory Interpretation

#### SOURCE A

##### *Royal College of Nursing v DHSS [1981]*

The wording of the Abortion Act 1967 provided that a pregnancy should be 'terminated by a registered medical practitioner'. From 1967 it was the practice that only doctors (registered medical practitioners) carried out the operation. From 1972 onwards, improvements in medical techniques meant that a nurse, without a doctor present, could perform some of the procedure. The court had to decide if a nurse's involvement was lawful under the Abortion Act. The case went to the House of Lords where the majority (three) of the judges held that it was lawful, whilst the other two said that it was not lawful. 5

The three judges in the majority based their decision on the mischief rule, pointing out that the mischief Parliament was trying to remedy was the unsatisfactory state of the law before 1967 and the number of dangerous illegal abortions. The other two judges applied the literal rule and said that the words of the Act were clear and that only a registered medical practitioner could carry out terminations. 10

Adapted from *The English Legal System, 4th Edition, J. Martin*

#### SOURCE B

The courts can, when they are trying to find Parliamentary intention, sometimes use intrinsic and extrinsic aids. Intrinsic aids are things inside the Act, for example, the preamble, the long and short title. Extrinsic aids are things outside the Act, for example, case law, Law Commission reports, previous Acts of Parliament, Hansard and dictionaries.

Answer **all** parts.

- (a) **Source A** at line 10 refers to the literal rule.

Explain the literal rule using **Source A** and cases to illustrate your answer. [12]

- (b) Using **Source B**, identify and explain the most suitable extrinsic aid that could be used in the following situations.

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

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

(iii) The House of Lords is trying to find the plain, ordinary, literal meaning of a word. The word is not defined in the Act. [5]

- (c) (i) **Source A** refers to the mischief rule.

Using **Source A** and other cases, explain how this rule is applied. [15]

(ii) Discuss the strengths and weaknesses of the mischief rule. [12]

QWC [6]

Total marks [60]

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

### Exercise on EC Law

#### SOURCE

#### *Bulmer v Bollinger [1974]*

Bollinger sought to prevent Bulmer describing Babycham as "champagne perry", and argued that Regulations 816/70 and 817/70 (governing the labelling of wine) should be referred to the European Court of Justice (ECJ) under Article 234. The judge declined to make such a reference and Lord Denning MR said the conditions for making a reference are:

- that the facts of the case should already have been decided 5
- that the decision of the question referred should be conclusive to the case
- that there had been no previous ruling on the point by the Court of Justice
- that the provision in question was not *acte clair* (reasonably clear)
- if a reference is held to be necessary, some courts must make a referral (those that are 10  
courts of last resort), others have discretion to refer.

In this case, the judge had not yet heard sufficient of the facts to know whether a reference would be necessary and so had been right to refuse.

Lord Denning went on to discuss the EC Treaty and its effect on the UK. He stated:

'The first and fundamental point is that the Treaty concerns only those matters which have a European element. The Treaty does not touch any of the matters which concern solely the mainland of England and the people in it. These are still governed by English law. They are not affected by the Treaty. But when we come to matters with a European element, the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back'.

English law has therefore been affected by the doctrines of European law, making it supreme.

Adapted from [www.stbrn.ac.uk](http://www.stbrn.ac.uk)

Answer **all** parts.

- (a) The **Source** at line 13 refers to the EC Treaty. Briefly explain how the EC Treaty is part of UK law. [12]
- (b) In the following situations, consider whether there is a need to make an Article 234 referral to the ECJ.
- (i) Jacques, a French worker, has been denied entry to the UK. The House of Lords is considering his case. The case concerns free movement of workers under the EC Treaty. [5]
  - (ii) Pam is paid less than male employees for doing the same work. She has brought an equal treatment claim against her employer. An Employment Appeals Tribunal is deciding the case. A reference to the ECJ in *Macarthys Ltd v Smith (1980)* concerned a similar issue. [5]
  - (iii) Carla has brought a claim in an Employment Tribunal against her employer because they refuse to give her any holiday entitlement, as required under EC law. [5]
- (c) (i) Lord Denning in the **Source** discusses the effect of membership of the European Union on English law.  
Describe the effect of European membership on English law using cases to illustrate your answer. [15]
- (ii) Discuss the benefits of European membership to English law. [12]

QWC [6]

Total marks [60]