Exam Questions

Past Questions & Guide to Answering

This is in addition to the guidance in your AS Guide book (those of you who have lost it, you can download a new one from the Blog www.queensburylaw.wordpress.com).

Included in here is every past question that can be found for both:

- **G151 English Legal System**
  - 2 hours, four questions

- **G152 Sources of Law**
  - 1 hour, all parts of one question.

For Sources of Law, there are no statutory interpretation questions in here, instead they are available on the Blog for you to download at will if you wish to (remember: they could occur as part of a mixed source e.g. with legislation).
### English Legal System

You must answer **four** questions in total from a choice of seven:

- At least **two** from section A; and
- At least **one** from section B.

**Content (from the Syllabus):**

* those items which are crossed out, appeared on January's paper, and therefore may be more unlikely to turn up on this paper.

<table>
<thead>
<tr>
<th>Civil courts and other methods of dispute resolution</th>
<th>County Court and High Court; jurisdiction at first instance; small claims; fast track; multi-track. Appeals and appellate courts. Problems of using the courts.</th>
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</thead>
<tbody>
<tr>
<td>Civil courts</td>
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<tr>
<td>Alternative to the courts (dispute resolution)</td>
<td>Arbitration; conciliation; mediation.</td>
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<tr>
<td><strong>Criminal process</strong></td>
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<tr>
<td>Police powers</td>
<td>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.</td>
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<tr>
<td><strong>Criminal courts</strong></td>
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<tr>
<td>Criminal courts</td>
<td>Pre-trial matters: bail, plea before venue, mode of trial. Jurisdiction of Magistrates’ Courts and Crown Courts at first instance.</td>
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<tr>
<td>Appeals</td>
<td>Appeals and appellate courts. Prosecution and defence rights of appeal.</td>
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<td><strong>Penal system</strong></td>
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<tr>
<td>Principles of sentencing</td>
<td>Aims of sentencing; purpose and effect of sentences; reoffending rates.</td>
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<tr>
<td>Powers of the courts</td>
<td>An understanding of different types of sentences, eg custodial, community, fines and discharges; compensation and other powers for adults and youth offenders</td>
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<tr>
<td><strong>Judiciary</strong></td>
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<tr>
<td>Selection and appointment; social background; training; tenure; independence; role. The theory of the separation of powers.</td>
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<tr>
<td><strong>The legal profession</strong></td>
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<tr>
<td>Barristers</td>
<td>Training, work and organisation.</td>
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<tr>
<td>Solicitors</td>
<td>Training, work and organisation.</td>
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<tr>
<td>Regulation</td>
<td>Regulation and complaints.</td>
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<tr>
<td><strong>Lay people in the legal system</strong></td>
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<tr>
<td>Lay magistrates</td>
<td>Selection and appointment; social background; training; role (including the role of the magistrates’ clerk); evaluation and criticism.</td>
</tr>
<tr>
<td>Juries</td>
<td>Qualifications of jurors; selection of jury panels; role in criminal and civil cases; evaluation and criticism. Alternatives to jury.</td>
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</table>
**ANSWERING ELS QUESTIONS**

**Section A Questions…**

**Part A:** Questions should be clearly structured - use subheadings if you want! Include a lot of detail e.g. cases, description etc.

“write as much as you can about the topic”

**e.g.** (a) Describe the powers of the police to arrest a person on the street. [18 marks]

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Define the key term(s)</th>
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<tr>
<td><strong>Main</strong></td>
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**Conclusion**

**Critical comment**

**Part B:** Evaluate the area of law.

To ensure that you get full marks, you only need to mention around 4 points, and develop them in detail! Remember: *read the question!*

**e.g.** (b) Discuss the extent to which the rights of the individual are adequately protected during arrest on the street. [9 marks]

<table>
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<th>Introduction</th>
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**Conclusion**
**Section B Questions...**

There will be a choice of two questions here!

**Part A:** Exactly the same as for section A questions! Detailed, logical and clear. Make sure that you cover everything the questions asks you about!

  e.g. Describe the rights during detention at a police station of an individual suspected of a serious offence. [18]

**Part B:** These are application questions. You need to apply the law as you know it to the situation described, and come to a logical conclusion.

You must link each point back to the person – use their name! Each legal point should link back to the problem. Aim for around 4 well developed, applied points.

  e.g. Hamish (aged 25) has been arrested and taken to the police station on suspicion of taking part in a bank robbery. He has been given the usual rights during interviews and searches.

  Discuss whether these rights are adequate to protect Hamish. [12]

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Identify the issues raised in the problem</th>
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<tr>
<td><strong>Main</strong></td>
<td><strong>Point</strong></td>
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<tr>
<td><strong>Conclusion</strong></td>
<td>Answer the questions clearly!</td>
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</tbody>
</table>
Past Questions

June 2010
(a) Describe the qualifications and training of both barristers and solicitors. [18]
(b) Discuss the problems associated with training for both barristers and solicitors. [12]

(a) Describe the roles of judges in civil cases both at first instance and in appeal courts. [18]
(b) Discuss the advantages and disadvantages of replacing all lay magistrates with district judges. [12]

(a) Describe the different methods of Alternative Dispute Resolution available to deal with civil cases. [18]
(b) Discuss the advantages and disadvantages of using arbitration rather than using the courts. [12]

(a) Describe the aims of sentencing and the factors that are taken into account when sentencing an individual. [18]
(b) Discuss which sentences would be most appropriate when the main aim of sentencing is the prevention of crime. [12]

(a) Describe the qualifications and selection procedure for choosing a jury. [18]
(b) Discuss the arguments for and against keeping the secrecy of the jury room. [12]

(a) Describe the rights of a person who is suspected of committing a serious offence, whilst detained, interviewed and searched at the police station. [18]
(b) Matilda is arrested on suspicion of burglary. She is taken to the police station and given an intimate search by a female police officer to search for stolen credit cards. Fingerprints and a sample of blood are taken from Matilda by force. She is detained for 30 hours before she is allowed access to legal advice. Explain whether Matilda's treatment at the police station was lawful. [12]

January 2010
a) Describe the jurisdiction of both the High Court and the County Court in civil cases including the track system. [18]
(b) Discuss the advantages and disadvantages of the small claims track. [12]

(a) Describe how it is decided in which court a criminal trial of an adult offender will be heard. [18]
(b) Pedro is pleading not guilty to a charge of the theft of a wallet from his colleague’s desk at work. Theft is a triable either way offence. Discuss the matters Pedro should consider when choosing in which court to be tried. [12]

(a) Describe the custodial and community sentences available for adult offenders convicted in both the Magistrates' Court and the Crown Court. [18]
(b) Dimitri, who has two previous convictions for minor assaults, broke a shop window whilst drunk and has been convicted of criminal damage in the Magistrates' Court. Explain which aims of sentencing are likely to be considered when deciding the sentence for Dimitri and suggest possible sentences. [12]
June 2009

(a) Describe both the training of solicitors and how complaints about solicitors are made and dealt with. [18]
(b) Discuss the extent to which recent developments have lessened the differences between barristers and solicitors. [12]

(a) Describe both the training of judges and their role in the criminal courts, including first trial and appeal courts. [18]
(b) Discuss the extent to which the training of judges adequately prepares them for the work they undertake. [12]

(a) Describe the process of deciding in which court a criminal trial will be heard. Include all categories of offence. [18]
(b) Tim has been charged with criminal damage to the value of £10,000 at a children’s playground. Identify in which courts Tim could be tried and discuss the advantages and disadvantages there are to him to be tried in each court. [12]

(a) Describe the rights during detention at a police station of an individual suspected of a serious offence. [18]
(b) Hamish (aged 25) has been arrested and taken to the police station on suspicion of taking part in a bank robbery. He has been given the usual rights during interviews and searches. Discuss whether these rights are adequate to protect Hamish. [12]

January 2009

(a) Describe both the training of barristers and how complaints about barristers are made and dealt with. [18 marks]
(b) Discuss the advantages and disadvantages of the current system of training barristers. [12 marks]

(a) Describe the different methods of Alternative Dispute Resolution (ADR) available to deal with civil cases. [18 marks]
(b) Discuss the advantages and disadvantages of using mediation and conciliation rather than using the courts. [12 marks]

(a) Describe both the qualifications required for jurors and the procedures for selecting a jury. [18 marks]
(b) Discuss the arguments for retaining juries. [12 marks]

(a) Describe the powers of the police to arrest a person on the street. [18 marks]
(b) Discuss the extent to which the rights of the individual are adequately protected during arrest on the street. [12 marks]

(a) Describe both the aims of sentencing and the factors which are taken into account when sentencing an individual. [18]
(b) Bethan (aged 16) has been convicted of the serious offence of robbery. She has several convictions for theft and has previously been given a Supervision Order and an Attendance Centre Order. Explain which would be the main aims and factors likely to be used when deciding the appropriate sentence for Bethan. [12]
June 2008

(a) Describe the different methods of Alternative Dispute Resolution available to deal with civil cases. [18 marks]
(b) Discuss the advantages and disadvantages of using arbitration rather than using the courts. [9 marks]

(a) Describe the role of juries in both criminal and civil cases. [18 marks]
(b) Discuss the arguments for retaining juries. [9 marks]

(a) Describe the theory of the separation of powers using examples to illustrate your answer. [18 marks]
(b) Discuss why the theory of the separation of powers is important to judicial independence. [9 marks]

(a) Describe the custodial, community and other sentences available for adult offenders convicted in the Crown Court. [18]
(b) Discuss which types of sentence would be most appropriate where the main aims of sentencing are rehabilitation and reform. [9]

(a) Describe the ways in which a client can make a complaint about their solicitor or barrister or otherwise claim compensation. [18 marks]
(b) Discuss whether the current system for clients to make such complaints is satisfactory. [9 marks]

(a) Describe the different appeal routes available to the defence from both the Magistrates’ Court and the Crown Court. [18 marks]
(b) Brian has been convicted in the Crown Court of the theft of a laptop computer worth £2000 and sentenced to 2 years imprisonment. He wishes to appeal against the conviction because a new witness has come forward. He also wishes to appeal against the sentence which he considers too harsh. Advise Brian in this situation. [9 marks]

January 2008

(a) Describe the civil appeals system from both the County Court and the High Court. [18 marks]
(b) Discuss the problems of using the court system to solve civil disputes. [9 marks]

(a) Describe the training of both barristers and solicitors. [18 marks]
(b) Discuss the problems associated with training for both barristers and solicitors. [9 marks]

(a) Describe the rights during detention at the police station, of a person suspected of a serious offence. [18 marks]
(b) Jack is arrested on suspicion of robbery. He is taken to the police station and given an intimate search by a police officer to search for stolen property. Fingerprints and samples of hair and blood are taken from Jack by force. Explain to Jack whether his treatment at the police station was lawful. [9 marks]
June 2007

(a) Describe the different methods of Alternative Dispute Resolution available with civil cases. [18 marks]
(b) Discuss the advantages of using Alternative Dispute Resolution rather than using the courts. [9 marks]

(a) Describe the roles of judges in civil cases both in trial courts and in appeal courts. [18 marks]
(b) Discuss the disadvantages of the present method of judicial selection. [9 marks]

(a) Describe the training of barristers and solicitors. [18 marks]
(b) Discuss the disadvantages of the current system of training barristers and solicitors. [9 marks]

(a) Describe the powers of the police to arrest a person on the street. [18 marks]
(b) Matthew is arrested on suspicion of a minor theft. He is taken to the police station and held for 40 hours without charge. He is refused access to a solicitor for advice while he is at the police station.

Explain to Matthew whether his detention at the police station was lawful. [9 marks]
**G152: Sources of Law**

Using the sources, you answer all parts of one question in one hour.

**Remember:** you should spend the first 6 minutes of the exam annotating the paper, identifying relevant information for each question from the source.

You must refer to the source. There are around 1/3 of the marks available in there, and without any mention of the source in your answers, you have dropped at least one grade at AS.

**Content (from syllabus)**

<table>
<thead>
<tr>
<th>European Union law</th>
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<tbody>
<tr>
<td>Institutions</td>
<td>Role of the Council, Commission, Parliament and the European Court of Justice, including Article 234 references.</td>
</tr>
<tr>
<td>Primary and secondary sources</td>
<td>Treaties, regulations, directives and decisions; their implementation and enforcement; the impact of European Union law on domestic legal institutions and law.</td>
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<tr>
<th>Legislation</th>
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<tbody>
<tr>
<td>Delegated legislation</td>
<td>Orders in Council; statutory instruments; bylaws; control of delegated legislation including Parliamentary Scrutiny Committees and Judicial Review; reasons for delegating legislative powers.</td>
</tr>
<tr>
<td>Statutory interpretation</td>
<td>Literal rule, Golden rule, Mischief rule, purposive approach; rules of language; presumptions; intrinsic and extrinsic aids; effects of membership of the European Union on interpretation.</td>
</tr>
</tbody>
</table>

**Law reform**

| 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 |
**ANSWERING SOL QUESTIONS**

**Key Point:** You **must** use the source!

### Section A Question

This will be a nice, straightforward question, and is assessed for **AO1**. Remember: use the source, and clearly structure your answer.

<table>
<thead>
<tr>
<th>Introduction</th>
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<tr>
<td><strong>Main Point</strong></td>
<td><strong>Explain</strong> (means... and...)</td>
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<tr>
<th>Conclusion</th>
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### Section B Question

These are application questions, marked for **AO2** and are worth 5 marks each. You need to apply the law as you understand it to each statement, and evaluate its truth. Remember to give **reasons**, or say why the other types of law or rules are **not** appropriate. The basics of the law you need to apply will be in the source!

**If the question asks you to pick the most appropriate... only pick one.**

**If you list loads, you will receive no points**

<table>
<thead>
<tr>
<th>Point</th>
<th>Why/Because</th>
<th>Example/Evidence</th>
<th>AORP</th>
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Your answers here can be short, and may only be a single paragraph... that’s fine!
Ci Question

See the plan for A!
This will be linked to question Cii (describe the topic here, then evaluate it in the next section), and there will be some information in the source, so remember to use it.

Cii Question

This is the discriminator on the paper. It is this question which will have the most impact on your grade. It is also the hardest! It is assessed for **AO2**, which means that you should assess and criticise the area of law asked about.

A couple of pointers:
1. Try to develop a discussion rather than a series of stated points
2. Take care with the phrasing of the questions - is it really asking you to state the disadvantages, or does it want you to evaluate the **effectiveness** of the area? Use the words of the question in your answer
3. Refer to the source.
4. You can use line numbers but do not just copy out the source!

<table>
<thead>
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<th><strong>Conclusion</strong></th>
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Delegated Legislation (OCR June 2010)

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

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


Examination Question – Answer all parts.
(a) Describe the need for delegated legislation using the Source and your knowledge of delegated legislation. [15]

(b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations:

(i) To implement a European Union Directive quickly when Parliament is not sitting. [5]
(ii) To allow a government department to issue regulations on education. [5]
(iii) For a train company (a public corporation) to implement a ban on the use of mobile phones by passengers. [5]

(c) With reference to the Source and your knowledge of delegated legislation.

(i) Describe the controls on delegated legislation. [15]
(ii) Discuss the effectiveness of the controls on delegated legislation. [15]

[Total marks 60]
Source A: Gibson v East Riding of Yorkshire (1999)

Gibson, a swimming pool instructor, employed by her local authority, was paid an hourly rate and was not paid during school holidays. Gibson was entitled to four weeks’ paid annual leave under the Working Time Directive (93/104/EC) which was directly enforceable by her.

Gibson had appealed against a decision of an employment tribunal on the grounds that it had erred in law in failing to apply Article 7 of the Directive which provided that every worker was entitled to paid leave of at least four weeks and which was directly enforceable by the applicant against the local authority as a emanation of the state.

Mr Justice Morison stated that, although directives had direct effect, they did so only in relation to employees of an emanation of the state. That was because the Directive itself was a provision directed to national governments and the state.

Source B

It is the European Court of Justice (ECJ), perhaps more than any other European body, which has made the EU what it is today: not simply a loosely connected trade bloc, but a close knit international legal structure which exercises vital influence upon our policy and economy. The Treaty of Rome refers only in passing to the role of the Court. Few could have anticipated the imagination and determination which would be brought to bear by the Court in ensuring that EU law is observed. Despite the limitations of the European Commission, the Court has created a system by which each and every individual beneficiary of EU legal rights can enforce those rights in the courts of his or her own domestic legal system.

Adapted from: The case for the European Court, Lord Irvine of Lairg LC, The Times, 28 April 1998

Examination Question - Answer all parts.

(a) Source A refers to directives. Describe how directives become law in Member States. [15]

(b) Consider whether any of the following individuals could succeed in an action against their employers for failure to comply with an unimplemented directive.

(i) Carlos, an employee of a privatised (formerly state owned) gas company. [5]

(ii) Wu, an employee of a hospital. [5]

(iii) Kelvin, an employee of a car manufacturer. [5]

(c) With reference to Source B and your knowledge of European Union law:

(i) Describe and illustrate the role of both the European Commission and the European Court of Justice (ECJ). [15]

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

[Total marks 60]
Exercise on Delegated Legislation and Law Reform

Source A
The Legislative and Regulatory Reform Act (2006) sets out the procedure for the making of statutory instruments which are aimed at repealing an existing law. Under section 13 of the Act, the Minister making the statutory instrument must consult various people and organisations. These include:
- organisations which are the representative of interests substantially affected by the proposals;
- The Law Commission (a law reform body whose function is to keep the law under review).

Orders made under this power of this Act must be laid before Parliament. There are three possible procedures:
- negative resolution procedure;
- affirmative resolution procedure;
- super-affirmative resolution procedure.

Source B
Delegated legislation can be challenged through the courts. The questioning of the validity of delegated legislation may be made through judicial review procedure, or it may arise in a civil claim between two parties, or on appeal.


Examination Question - Answer all parts.

(a) Source A refers to the Law Commission. Describe the role of the Law Commission. [15 marks]

(b) Explain in the following situations if there would be a successful judicial review.

(i) A government minister wishes to repeal an old law. He has not consulted relevant bodies, which are affected by the proposals, before introducing new regulations. [5 marks]
(ii) A government minister is given power to make regulations concerning legal funding. He has now introduced a regulation on immigration. [5 marks]
(iii) A government minister has made regulations which are argued to be unreasonable. [5 marks]

(c) (i) Source A refers to statutory instruments:
Describe statutory instruments and two other types of delegated legislation using the Source and other examples. [15 marks]

Source A and Source B refer to a number of controls.
(ii) Discuss the effectiveness of Parliamentary and judicial controls over delegated legislation. [15 marks]

Total Marks [60]
Source A: Marshall v Southampton Area Health Authority (1986)

Miss Marshall, a dietician, was compulsorily retired by the Health Authority from her job when she was 62, although she wished to continue to 65, the State retirement age for men. It was the Authority’s policy that the normal retiring age for its employees was the age at which State retirement pensions became payable: for women this was 60, though the Authority had waived the rule for two years in Miss Marshall’s case. She claimed that the Authority was discriminating against her by adopting a policy that employees should retire at state pension age, hence requiring women to retire before men. The national court made reference to the European Court of Justice (ECJ) asking for directions on the meaning of the Equal Treatment Directive. The ECJ found that there was a conflict with the UK law, and the UK changed its legislation to conform.

Source B

Directives may have vertical direct effect but not horizontal direct effect. This means that they impose obligations on Member States and not on individuals.

The ECJ has found a number of ways to widen access where the principle of vertical direct effect applies. First, it has defined ‘the State’ very broadly to include all public bodies, including local authorities and nationalised industries. This meant in Marshall v Southampton AHA the claimant could rely on the Directive even though she was not suing the Government itself, because her employer was considered part of the State.

Source A and B adapted from: English Legal System, Elliot & Quinn, Longman.

Answer all parts.

(a) Source A at lines 7-10 refers to the European Court of Justice (ECJ). Describe the role and composition of the European Court of Justice. [12]

(b) Using Source B, consider whether any of the following have a claim against their employers for a failure to comply with a directive.

(i) Bert is a midwife working for a private hospital. [5]

(ii) Winston is an accountant working for a company which was owned by the Government twenty years ago. [5]

(iii) Letitia is a dog warden working for a local council. [5]

(c) With reference to Source A and Source B:

(i) Using the sources and other examples, describe directives and how they become law in Member States. [15]

(ii) 'Directives can never have horizontal direct effect.' Discuss the problems which are caused by this. [12]
Exercise on Legislation and Delegated Legislation

Source A

Steve Thoburn, the market trader convicted in Sunderland Magistrates’ Court this week for selling fruit in pounds and ounces alone, rather than along with metric measures, was not prosecuted under the law as it is usually understood - a statute passed after deliberation by MPs and Peers. He was prosecuted under 'delegated legislation'. The case was brought under the Units of Measurement Regulations 1994 - which came into effect in 2000.

Parliament passed 3,412 similar regulations last year. MPs have only been back at work a few days after the Christmas break and already they have passed 60 of them. While Parliament gets to "see" them, few have even the remotest chance of being debated, let alone defeated.

There is nothing new about government’s use of statutory instruments or SIs - the annual average has been rising in recent years. (Annual records began in 1895).

From Edward Page, Whitehall’s bread and butter, 19 January 2001
(C) Guardian News & Media Ltd 2001

Source B

There are a variety of controls of delegated legislation. Judicial controls include procedural ultra vires (where the correct procedures have not been followed) and substantive ultra vires (where the Minister has gone beyond the powers given to him). The courts are also concerned with reasonableness and decisions that are not considered valid where no reasonable person would have made them. Parliamentary controls include negative and affirmative resolutions. It is argued that the controls on delegated legislation are not sufficient and need improving.

Adapted from Terence Ingman, The English Legal Process.

Answer all parts

(a) Source A refers to statutory instruments.
Describe and illustrate statutory instruments and two other types of delegated legislation. [15]

(b) Discuss whether the delegated legislation could be successfully challenged in the courts, in the following situations.
(i) A Local Authority creates a byelaw banning singing near houses. It is designed to stop carol singers [5]
(ii) A Minister has been given power to make delegated legislation in legal funding. He introduces regulations concerning health care. [5]
(iii) A minister brings in a statutory instrument into force without consulting all the parties specified in the Enabling Act. [5]

(c) With reference to Source B:
(i) Describe the need for delegated legislation. [15]
(ii) Discuss the disadvantages of delegated legislation. [15]

Total marks [60]
Exercise on Legislation and Delegated Legislation

SOURCE A

Parliament consists of three distinct elements: the House of Commons, the House of Lords and the Queen. Before any Bill can become an Act of Parliament, it must proceed through and be approved by both Houses of Parliament and must receive Royal Assent.

SOURCE B

In order to reduce pressure on parliamentary time, some Acts of Parliament often known as enabling (parent) Acts, give government ministers or other authorities the power to regulate administrative details by means of ‘delegated’ or secondary legislation.

Delegated legislation mostly takes the form of Orders in Council, Statutory Instruments (SIs) and also Bylaws made by local authorities for local issues.

These are as much the law of the land as are Acts of Parliament. SIs are normally drafted by the legal department of the ministry concerned and may be subject, when in draft, to consultations with interested parties. About 3,000 SIs are issued each year.

To minimise any risk that delegating powers to Government bodies (e.g. Ministers and local authorities) might undermine the authority of Parliament, such powers are normally only delegated to authorities directly accountable to Parliament.

The enabling Acts concerned, sometimes provide for some measure of direct parliamentary control over proposed delegated legislation, by giving Parliament the opportunity to affirm or annul it. Parliament always has the right to consider whether the SI is made in accordance with the powers that it delegated.

The courts can also control delegated legislation through the process of judicial review.

Adapted from www.news.bbc.co.uk

Answer all parts

(a) Source A at lines 2-3 refers to making an Act of Parliament. Describe how an Act of Parliament is created. [12 marks]

(b) Identify and explain the most suitable type of delegated legislation to implement law in the following situations.

(i) A national emergency such as an outbreak of war involving the UK. [5 marks]
(ii) Where an enabling Act authorizes the issuing of regulations concerning police powers. [5]
(iii) The local imposition of penalties for dogs fouling footpaths. [5 marks]

(c) With reference to Source B:

(i) describe the controls on delegated legislation: [15 marks]
(ii) discuss the effectiveness of the controls of delegated legislation. [12 marks]

Total marks [60]
Bollinger sought to prevent Bulmer describing Babycham as "champagne perry", and argued that Regulation 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
- 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 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.

"The first and fundamental point of 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)

Examination Question - Answer all parts.

(a) The Source 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 *Macarthy 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 holiday entitlement as required under EC law. [5]

(c) Lord Denning in the Source discusses the effect of membership of the European Union on English Law.

   (i) Describe the effect of European membership on English law using cases to illustrate. [15]

   (ii) Discuss the benefits of European membership to English law. [12]
Exercise on Delegated Legislation

Source A

Police and Criminal Evidence Act 1984, Section 60: Tape recording of interviews

(1) It shall be the duty of the Secretary of State –

(b) to make an order requiring the tape recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order…

(2) An order under subsection (1) above shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Source B

Statutory Instrument 1991 No.2687

The Police and Criminal Evidence Act 1984
(Tape-recording of Interview) (No 1) Order 1991

Made 29th November 1991
Laid before Parliament 6th December 1991
Coming into force 1st January 1992

Now, therefore, in pursuance of the said section 60(1)(b), the Secretary of State hereby orders as follows:

2. This Order shall apply to interviews of persons suspected of the commission of indictable offences which are held by police officers at police stations in the police areas specified in the schedule to this Order and which commence after midnight on 31st December 1991

3(1). Subject to paragraph (2) below, interviews to which this Order applies shall be tape-recorded in accordance with the requirements of the code of practice on tape-recording which came into operation on the 29th July 1988...

3(2). The duty to tape-record interviews under paragraph (1) above shall not apply to interviews –

(a) where the offence of which a person is suspected is one in respect of which he has been arrested or detained under s.14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989:...

Answer all parts

(a) Using both sources, describe the legislative process in relation to an Act of Parliament and delegated legislation

(b) Each of the following interviews was conducted by police officers and took place at a police station covered by SI 1991/2687, but none of the interviews was tape-recorded. Discuss whether the following interviews are covered by the regulations, with reference to source B:

i. On 30th November 1991, Alice was charged with an indictable offence and interviewed;
ii. Bertie, who was suspected of an indictable offence, was interviewed on 1st April 1998;
iii. Cedric, detained under s.14(1)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 and was interviewed in April 1998

(c) (i) Explain the reasons for having delegated legislation
(ii) Discuss the advantages and the disadvantages of delegated legislation

Total 60
EU Law and Delegated Legislation

Source A

In many ways the most important type of legislation is delegated legislation. This describes legislation made by a subordinate body (a body other than parliament) authorised to make law by an Act of Parliament. The Health and Safety at Work Act 1974, for example, authorised a government minister to make new safety laws by issuing regulations (see Source B below). Safety laws have to be complex and may need frequent updating. It would be impractical to put every complex change in the law through the full stages of parliamentary procedure. Technically, regulations of this kind are known as statutory instruments.

Adapted from: A Level Law, AM Dugdale, MP Furmston, SP Jones, CH Sherrin, Butterworths.

Source B

(This statutory instrument was introduced to implement EU Directive. In Marshall v Southampton and South West Hampshire Area Health Authority (1986) it was stated that Directives only have vertical direct effect, not horizontal direct effect. If Mrs Marshall had been employed by a private company she would have had no remedy.)

The Health and Safety (Display Screen Equipment) Regulations 1992:

Some important definitions:
. Display Screen Equipment used at workstations includes computer monitors. Screens showing mainly TV or film picture are not covered.
. Users Uses the display screen equipment more or less daily and for continuous spells of an hour or more at a time.

The Regulations:

Regulation 1: requires every employer to perform a suitable and sufficient assessment of workstations to assess any health and safety risks and to take action to reduce those risks to the lowest extent possible.

Regulation 2: Requires employers to plan the activities of those using workstations so that daily work is periodically interrupted by breaks or activity changes. These could be informal breaks away from the screen for a short period each hour.

Regulation 3: gives users the opportunity to have an appropriate eye and eyesight test as soon as practicable after requesting one and at regular intervals thereafter. The costs will be met by the employer. Adapted from the Regulations.

Examination Question - Answer all parts.

(a) With reference to Source B. Briefly explain with examples the term ‘vertical direct effect’ and ‘horizontal direct effect’. [12]

(b) Apply the content of the Health and Safety (Display Screen Equipment) Regulations 1992, in Source B, to each of the situations described below:

(i) Mario is about to start a new job as librarian in a small school. The job will require occasional use of a computer monitor. The Deputy Head is also the school Health and Safety Officer and is anxious to comply with all relevant legislation. [5]

(ii) Amir works as a telephone-sales representative. His regular daily work requires long periods of sustained concentration as he transfers information from customers onto a computer system. He is finding it difficult to sustain his concentration. [5]

(iii) Julie works as a receptionist in a busy office. Her daily work involves monitoring a TV screen (fed from security cameras) and constant use of a computer monitor to perform a variety of functions. She has started to suffer with blurred vision. [5]

(c)(i) Source A refers to ‘statutory instruments’. Describe with examples the nature of statutory instruments and the process of bringing them into force. [15]

(ii) Using Source A and other examples discuss the advantages and disadvantages of delegated legislation. [12]
Exercise on Legislation and Delegated Legislation

SOURCE A

Statute law consists of Acts of Parliament – primary legislation – and delegated or secondary legislation made by ministers under powers given to them by an Act. Delegated legislation takes three main forms: Orders in Council that are enacted by the Privy Council in times of emergency, bylaws that are passed by local authorities to cover matters relating to their own local area and statutory instruments made by ministers and government departments to make regulations relating to matters under their control.

While the interpretation of the law is refined constantly in the courts, changes to statute law can only be made by Parliament. Draft laws take the form of parliamentary Bills. The Bill is presented to Parliament as the first stage in the process of passing an Act of Parliament. This first stage is known as the ‘First Reading’.

Adapted from www.direct.gov.uk

SOURCE B

Despite the controls over delegated legislation, the reality is that effective supervision is difficult. First, publication has only limited benefits, given that the general public are frequently unaware of the existence of delegated legislation, let alone on what grounds it can be challenged and how to go about doing so. This in turn has an effect on the ability of the courts to control delegated legislation, since judicial review relies on individual challenges being brought before the courts.

The main method of control over delegated legislation is therefore parliamentary, but this too has its drawbacks. Although affirmative resolution procedure usually ensures that Parliamentary attention is drawn to important legislation, it is rarely possible to prevent such legislation being passed. The Select Committee on the Scrutiny of Delegated Legislation makes an important contribution, however, it too lacks real power.

Adapted from ‘English Legal System’, Catherine Elliot and Frances Quinn, Longman

(a) Source A refers to how a Bill becomes an Act of Parliament. Briefly describe the process by which Acts of Parliament are passed [15]

(b) Source A at lines 3-6 refers to different types of delegated legislation. Identify and explain which type of delegated legislation would be the most appropriate to introduce law relating to:

(i) the use of skateboards in a local park.

(ii) The implementation of regulations outlined in an enabling Act relating to the construction of a new motorway:

(iii) Emergency measures to be taken in time of war. [15]

(c) Using Source B and your knowledge of controls of delegated legislation:
(i) Describe the controls exercised over delegated legislation by both Parliament and the courts. [15]

(ii) Discuss the effectiveness of these controls [15]
Exercise on European Legislation

SOURCE A

Race Directive 2003

On 25 November 1999 the European Commission, after consultation with the European Parliament, published proposals leading to a directive. This Directive establishes, for the first time, a minimum standard of legal protection from racial discrimination across Europe. (Directives depend on implementation by member states as they do not have horizontal direct effect.)

The Race Relations Act 1976 (Amendment) Regulations 2003 (a statutory instrument) implement the Race Directive into UK law. They were laid before Parliament on 8 May. The debates on the regulations took place in the Commons and in the Lords on 11 June. Both Houses approved the regulations.

SOURCE B

Direct Discrimination

To make a claim of direct discrimination under the Race Relations Act, anyone who makes a complaint must have proof of less favourable treatment. This must be on the grounds of race, national and ethnic group, nationality and colour, compared to another person of another racial, ethnic, national group or nationality or colour.

Genuine Occupational Requirement (GOR)

The 2003 Regulations provide for exemptions called Genuine Occupational Requirements covering selection, promotion and training. Taking account of the type of work, or the context in which the work is carried out, the employer must be able to show that there is a genuine need for a person of a particular race, ethnic or national origin. Examples could be:

- the need to maintain authenticity of dramatic performances of a particular national or ethnic origin;
- the need to maintain the image of a place where ethnic foods are served;
- the provision of personal services such as legal advice to persons from a particular ethnic community;
- the need to maintain the principles based on a religion or belief, for example in churches or single faith schools.

(a) **Source A** at lines 1-2, refers to the European Commission and the European Parliament. Describe the law-making functions of the European Commission and the European Parliament. [15].

(b) Advise the following people whether they have a genuine cause of action under the 2003 Race Regulations, relating to Genuine Occupation Requirements, as outlined in **Source B**

(i) Baijinder, a Sikh, applied for a job as a waiter in an Italian restaurant. He was turned down for the job on the basis that he did not fit the cultural image of the restaurant;

(ii) Urma applied for a job as a caretaker in a Jewish School. She was turned down for the job on the basis that she did not practise the Jewish religion;

(iii) Fola, a qualified accountant, was turned down for a job with an accountancy firm on the basis that she did not speak Urdu. [15].

(c) With reference to **Source A**

(i) Explain how directives, such as the Race Directive 2003, become law in Member States. [15].

(ii) Discuss the problems that can arise when a directive has not been implemented in time. [15].