

GCSE, GCE, VCE and GNVQ Examining Bodies

Examining body	Edexcel international		
Centre number		Candidate number	
Subject/module title	Law		
Paper reference	YLA01401		
Surname			
Other names			
Candidate signature			

- Use blue or black ink or ball-point pen.
- Write the information required in the spaces above.
- Use both sides of the paper.
- Write the question number in the left-hand margin.
- Rule a line across the page after each answer.
- Do all your rough work in this answer book and cross through any work you do not want marked. Do not tear out any part of this book. All work must be handed in.
- Write the numbers of the questions you answer in the order attempted in the left-hand column of the boxes opposite.
- Check that you have written the information required on each additional sheet used and have attached each sheet to this book.

Write here how many additional sheets you have used (if any).

For examiner's use	
Examiner's initials	
Question number	Mark
7	
6	
1	
5	
Total	

Question number

Part Two

(7)	Answer to the question no 7
	The given question requires a brief explanation on what is precedent, why does it exist, the principle of stare decisis, operation of the precedent, how to avoid ^{precedent} void the heir-archy of the precedent and

Leave blank

a ~~small~~ discussion do judges
make law.

According to
~~From~~ the question we can
first state about a short
~~dis~~ description of common law.

The common law of the
precedent in England and
Wales is conquered dating
back from the Norman times.
The ~~judgmen~~ judgement of the
higher courts are obeyed by
the ~~future~~ cases ~~in the~~
lower courts and the courts
itself in the future ~~courts~~ courts.

A judgement made by the
higher courts which is bound to
obey in the lower courts in
future cases which the facts
similar in called the
binding precedent. A binding
precedent consists of three
concepts

- (i) The judgment should be
made in higher courts.
- (ii) The facts should be
similar.
- (iii) And the cases previously
should be abide in future
cases.

A question might arise that is binding precedent necessary? The answer is Yes. Because of the desirability of the Certainty and Respect to the past.

In U.K binding precedent is actually the respect for the Parliament. As we know that UK's Parliament is Supreme. And UK's loves its constitution, its convention. So, the love and respect for their convention the precedent is binding.

The principle rule for binding precedent is stare decisis. The stand by rule. UK basic The binding precedent is actually the principle which is bound to follow the previous higher court decision. For example:- The HOD Now Supreme court (UKSC) before the House of Lords (HOL) so The decision of HOL is bound by to follow by all inferior courts. As for example: The court of appeal, is bound by HOL. And the Divisional High court is

bound by Magistrate court and county court. And all the courts are bound by HOL.

Case eg:- Donogue v Stevenson and Grant v Australian knitting mills.

There is two traditional view in ~~diadi~~ the judgment of binding precedent.

- (1) Ratio decidendi and
- (2) obiter dicta.

Ratio decidendi:- It is the rule of the law. The important view for the judgment which is even binding.

In this case R v Dudley Steven :- ^{the two} Shipwrench, ate the cabin boy. Here ~~that~~ they both were convicted for murder. There was no defence of necessity here. The HOL refused the defence of necessity with reason.

obiter dicta:- It is not binding but important.

R v Howe and R v Grotts.

A precedent might change its decision while social or moral change is needed. ✓

Eg:- Airedale NHS Trust v Bland

NAME EXPLANATION A, OBITER
→ CASE LABEL

A previous decided cases ~~also~~ bounded to follow in the future case which is decided by the higher courts is mainly the known as the binding precedent.

If in case ~~it~~ in need the house of lords decision or the court higher in hierarchy's decision is overruled then ~~the~~ it will be known as the persuasive authority.

As these decision are been taken in order for justices. Therefore the decision which where persuasive, ~~is~~ is:-

- (i) The decision of COA (R v R)
- (ii) The decision of Privy Council (Holley)
- (iii) The obiter dicta (R v Howe)
- (iv) The decision of other country (A-Z v Mills) ✓

The main objectives for the binding precedent is:-

- (i) Every higher court's decision should be followed in the inferior court or to the appellants court if itself.

The operations of the court hierarchy:-

- (i) The European Court of Human Rights (ECtHR)

Under sec 3(1) the ECtHR the ECJ is ~~bound to~~ superior to all other courts under the ECtHR.

- (ii) The House of Lords (Now UKSC)

The ~~HOL~~ was named newly as the ~~UK~~ Supreme Court of U.K. The rule of law maintaining the certainty was the main will before the Practice statement released 1966. In London Tramways v London County Council.

After the Practice statement 1966 the situation of the HCL was changed. The Practice statement itself issue for the betterment of justice.

~~The reasons for change:-~~

(10)

The impact of Practice statement:-

(i) The courts to apply the justice accurately.

(ii) The courts to deal with what actually the case the case concept mean.

After the Practice statement the ~~Howe~~ case Herring v VBBB overruled the case Adder v sons.

~~SB~~ R v Shivpuri overruled ~~knoller~~ ^{Hedley} ~~knoller~~ _{DRB}.

But ~~knoller~~ HCL ~~refused~~ knoller v DPP to overrule Shaw v DPP.

~~The~~ (iii) The Court of Appeal: (CA)

The CA is bound to follow the HCL. But in many cases it follows & overrules the HCL. eg:- Ghaidan v Mendoza.

(10) The divisional court, county court, Magistrate court :- these courts are bound to follow the decisions of the court hierarchy.

Well, these were the discussions of the operations, hierarchy and what binding precedent is.

GOOD EXPLICIT
FOCUS

Now, we can discuss about till what extent does the preserves the consistency and legal certainty of the law according to the doctrine of precedent.

According to William Blackstone we can see there are two types of theory of doctrine of precedent. The declaratory theory and discretionary theory.

Blackstone's theory is views that judges do not make law they just declare it.

Judges work is to just.

the law make a sense to it and declare it. But As Lord Reid's view was that judges merely make law when necessary. There is many views given by many law lords. But all are not possible to discuss.

Judges ^{do} ~~to~~ make law. The famous ~~example~~ for this is R v R. The 250 years old decision was changed regarding the necessity, that husband can also rape his wife. If they are a married couple that does not consent's to sex.

In Kleinwortz v Beaumont

in this case the most old contract law rule was ~~over~~ overruled that the ~~Power of~~ mistake of fact cannot be considered as mistake of Act.

A vast constitution of U.K is unwritten. So the tort and contract law is also unwritten. Whenever new facts arises the decisions are given ~~so~~ according to ~~the~~ the common law.
Mendoza v Ghaidan

In the famous case of fitzpatrick the decision was given by HOL that same gender can ~~be~~ have a familial link. Again ~~more~~ in other case of Ghaidan v Mendoza CA gave ~~a~~ a decision that same sex partners can ~~be~~ ~~be~~ ~~claimed~~ as couple.

However the CA overruled the HOL and was not bound ^{EXPLAIN} ^{HRA} by the decision of the HOL.

In the criminal division Camplin the ~~recklessness~~ of defendant(d) should be subjective recklessness.

B. But in Holley the recklessness was the objective one. So the court ~~decided~~ ~~the~~ ~~new~~ made a law here. However Reid said that

It the objective recklessness
was just declared as it
was before ~~forwards~~ decided
R v Cunningham

There was a defence of
Provocation in Karimi,
James and Fagiri. The
CA decided the Codwell
case and later decided
the Holley case which
was decided by Privy
Council and followed by
~~1st 1st 1st 1st 1st 1st~~ Thien.

However by above discussion
it can be said that
judges do make ~~at~~ law
~~by~~ but apply discretion.

So, it is accurate to
say that the common
law doctrine of precedent
abides by it precedent
by ~~or~~ due to necessity
make law.

✓ CREDIT FOR
JUDICIAL
CREATIVITY,
ETC

LEEWAYS OF
APPLYING -

DISTINGUISHING /
UNDERMINING / CONTRACTING
RATIO ?

STRONG & FOCUSED
OTHERWISE

Very clear explanation of precedent with
a good discussion of the certainty + certainty
aspect

(6) Answer to the question 6

The given question needs a discussion on Statutory interpretation, its rules of statutory interpretation and Purposive approach.

The Statute is a law passed by the Parliament. And the Statutory interpretation is its understood to shell out what is the Parliament's intention. To find out the "intention" of the parliament its the statute regarding the statute is the statutory interpretation. The rules of There are traditional rules for the statutory interpretation. They are the literal rule, golden rule and the mischief rule. ? STAT - 4 ?

The rules of interpretations is known as statutory interpretation. The Interpretation Act ~~1950~~ was issued for understanding the statute.

The literal rule, is the rule which is ^{rule} originally free to find the actual intention of the parliament.
R V Harris, R V City London County Council.

There are many advantage and disadvantages for the literal rule.

BUT @ SPECIFICALLY ??

~~Advantages~~ Advantages:-

- (I) Creates Loopholes
- (II) ~~Ther judge~~ There might be a disagreement with the meaning of the intention ' R V Harris '.

~~Advantages~~

Dis-advantage:-

- (I) If an rule is decided wrongly the parliament needs time to correct it
- (II) Judges power is limited
- (III) The original meaning might be isfrindged
- (IV) obvious rules are not followed

(IV) The Parliament's view is the supreme.

~~(10)~~ The Golden Rule:-

It is the modification of the literal rule of we can say that, the rule which is ~~is~~ enacted after the literal rule to avoid absurdity. Grey v Pearson.

The Advantages

(I) Closes the loopholes

(II) The judges are give supreme power.

(III) The rule which is wrong the parliament ~~gives~~ corrects is ~~for~~ on time.

(IV) The intention is to create justice.

(V) The absurdity is ~~is~~ infringed.

Disadvantages:-

(I) Gives the Judges more power which is not acceptable by the U.K's parliament. As the U.K

Constitution is supreme.
Parliamentary supremacy.
The judges to have power
for making or deciding
rule is not acceptable.

~~(Q2)~~ The mischief rule is the
very old rule which is
applied by the reference
of the Meydon's case.
For the mischief rule to
apply we need to question
out some necessity.

- (i) What was the common law?
- (ii) Why was the common law
not applied?
- (iii) What was the intention
of the Parliament?
- (iv) Was the mischief rule
~~is~~ infringed?
- (v) Will the Meydon's case
reference will be applicable
or not.

These are the ~~three~~ rules of
the statutory ~~interpretation~~
but nowadays they are not ~~is~~
applied to an extent.
There ~~was~~ is a approach
which was established that
~~is~~ is the Purposive approach.

The purposive approach is the approach where legislation will be applied according to the European Court of Convention of Human Rights while applying EU law.

It is actually the "spirit of the Act". Lord Denning LJ said in Magor & St that

"The courts job is to find out the true meaning of the Parliament's Statute not to just find out a rubbish out of it. That is an easy work in which the lawyers are prone. The spirit is to find the correct meaning and apply. To understand the legislation accordingly is the main aim. The statutory interpretation was ~~very~~ ~~has~~ ~~given~~. In the reference of Hansard's case in Pepper v Hart. ~~It was in the~~ clearly referenced by the Hansard case.

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(6) The impact of sec(3)⁽¹⁴⁾ of HRA 1998 has effected greatly into the statutory interpretation. But this It is not discussed as, as not needed in the question.

However, we know that the approaches done by judges are

However the legislation decision approached by judges has reached broadly and is predictable. There are rules in statutory interpretation but not being used nowadays.

IMPLICIT HERE IS SCEPTICISM ABOUT "RULES" COULD HAVE BEEN SPelt OUT BETTER.

X ————— X + PROJ/CONS ANALYSIS
DISPLACES MORE FOCUSED APPROACH.

Some good points on the approaches but STILL GOOD BUT NOT ON CUSP OF VG - LACK ANALYTICAL DIRECTION - CERTAINLY GOOD KNOWLEDGE BASE -

a few on its pos + cons rather than predictability

(1) Answer to the question no 1

~~Then given~~

Before answering the meaning of the term legal positivism we need to ^{WHY?} discuss ~~about~~ what law and morality is.

~~law~~ So, let's begin with what law is, law is the rules and regulations abide by the public. "Salmond" said law is the legal rule which is bound to follow by the citizen of the state. Again philosopher Austin also said that ^{CR BE JUDICIAL VERDICT --} law is the written statute ~~that the state~~ ~~from~~ the government that the state follows. It is ~~somehow~~ also true that without law a state will have no discipline. eg:- law of Murder is the maliciously killing of a human body. ~~We can't~~ ~~A For~~ a safety under the Queen's peace law is very essential.

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Morality is the values, discipline, ~~consciousness~~ which a person follows in his life. Morality ~~can~~ according to Phil Harris is described that the feelings, values, consciousness, ^{views} ~~of~~ in a persons life, organization ~~so~~ is Morality. Religious views is also ~~of~~ ~~the~~ Morality. Eg - Having sex before marriage in asian countries is not in its morals but in Europe countries it is not ~~a~~ in Morals.

There is a ~~st~~ ^{BUT SPECIFIC} ~~slight~~ difference in the law and ^{OF} ~~morality~~. (1)?

As in S.18 of the offence Act, there defendant will be charged under ~~this~~ S.18 for grievously bodily harm to other person. [R v Bland].

But for ~~the~~ breaking
the morals there is no
offence or punishment which
a person will bear.

Although there is difference
~~etc~~ there is ~~even~~ similarities
in law and morality.

Law and moralities overlap ~~for from the~~ ~~the~~
relationship with it. As
law has no duty of care
until an unless there is
a relationship between each
other. Which the morality
has. As in law there
is no need to help
your neighbour if he/she
is in difficulty. But
~~no~~ moral values does not
allow it.

In Gibson v Proctor the
father was convicted to
not feed his baby
child. It was actually
an omission ~~not~~ act.

There are many descriptions
where law and moralities
conflict.

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numberLEGAL POSITIVISM SHOULD HAVE
APPEARED BY NOWLeave
blank

The law and morals change according to judicial review. ~~was~~. As for example R v R case. This famous case ~~was~~ has changed the 250 years old decision by considering the morals. It does not mean that if a couple is married they consent for having sex. In spite of married there can be rape. In this case the wife filled a case against ~~to~~ the husband for convicting rape.

So, According to these ^{view} we get to about the law and morality. Here the question arises does the ~~issue~~ ^{idea} gives an idea of law or the merit of law. And the answer is Yes. ~~both~~ the law of idea is issued and ~~un~~merely provided also.

There are two ~~views~~
theory ~~the~~ ~~is~~

(I) Natural law theory

(II) positive law theory

AQUINAS
FINNIS
ETC...

Natural law theory:-

The theory in which

~~but~~ ~~law~~ ~~law~~ morality is

conflicted the law ~~it~~

the the law will be

repealed.

NEEDS
AMPLIFICATION
AS IN DIRECT
OPPOSITION
TO L.P.

But in positive law theory

if the morals are

conflicted still the law

will be applied.

AUSTIN/
BENTHAM
HART.

There are two view ~~add~~

~~of~~ Hart Fuller Debate

and Hart - Devlin's debate.

The Hart - Fuller debate is

about a Nazi wife where

she has send her husband

to prisonment and

infringed the ~~of~~ freedom

of her husband. Here

Hart said that morals

don't infringe. In the

other way Fuller is

if the morals are

infringed then the

~~case~~ should be repealed.

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Again in the Hart-Devlin's case the homosexuality couples should be given equal rights ~~as~~ going and cannot be commit criminal defence ~~against~~ going against the morality. In this ~~the~~ Hart stated about the equal right of all the genders. It is a legal right ~~to~~ to live with a proper ~~freedom~~. But Hart is a positivist. ^{NC - HART IS A POSITIVIST IN A DIFFERENT SENSE.} Where a positivist ^{HART/DEVLIN IS A DIFFERENT DEBATE..} states the law to be correct until and unless it changes others. And Devlin-Fuller are natural lawyers. ^{HERE THEY SAY THAT MORALS FORM THE LAW.}

After the Wolfenden report ~~the~~ there was a argument to make homosexuality

legal and prostitution
illegal. ~~But for~~ But this
totally conflicts the
morals.

Legal positivism can^{not} be
~~can~~ considered as the
~~act of consent~~ bodily
harm as the consent to
sex. As in R v Brown it
was held ~~that~~ the
~~act of~~ sexual consent
is not consent to
grossly bodily harm.

In Emmett the person
lighted candles on his
partner's breast which
was not according to
the legal positivism.

The law doesn't allow
a person to do such
act.

Rather we can find
many controversial
case regarding law
and morality. One of
the case is Re A (2000)
where the lesser
evil is chosen.

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Somehow it is not that
~~clear that law and~~
morals ~~or~~ and law
do not need each other.
Both are necessary in
~~the legal living of a~~
in a society. Because
both play a vital
role. So the more positively
we take the more positively
we live.

A descriptive response to legal positivism.

Some good understanding^{*} but not closely
applied to the question

TOPIC IS AS
FAR AS THIS CAN
GO - NOT EXACT
ENOUGH IN TERMS OF
THEORETICAL EXPOSITION

CRUX OF NL / PSYD IS

THERE IS NO NECESSARY CONNECTION BETWEEN
LAW & MORALITY

THIS ANSWER IS TOO SLIGHT/
GENERALISED ABOUT LAW &
MORALITY

THEORY ON P2 SHD HAVE BEEN
DISCUSSED

ASL1

(5) Answer to the question no(5)

In a constitutional statute, the act that has been issued to bring the rights back under the U.K. ~~to~~ ~~court~~ domestic court is the Human Rights Act 1998. (HRA 1998).

Human Rights Act 1998 is the act of European ~~Convention~~ Union which has been brought under U.K. government, in the concern of the betterment of the citizen, keeping in note about the supremacy of the U.K.

~~Human Rig~~ HRA 1998 was brought under the domestic court of U.K. to ensure the rights of citizen, to reduce the expense of the citizen. As ~~the court~~ is in the European court is in the Strasbourg so if any case is dismissed under the U.K. Supreme court the citizen must travel to Strasbourg for justice.

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which becomes too expensive
and lengthening so keeping
everything in mind the
HRA 1998 was implemented
under UK ^{domestic} court. [Waddington v Miah].

First let's discuss about ^{SUBSTANCE?}
the benefits ~~of~~ of HRA ^{2,3,4} EX
1998 under U.K court :-

(I) The ~~sense~~ of citizen's
right was confirmed.

(II) Gay was legalized.

(III) The Parliament could
bind any law under the
rights of citizen

(IV) The Act ~~was~~ has saved,
time, money. And

Representing the HRA 1998
we can issue the sections
under it.

ECTHR is the international
court situated in Strasbourg.
~~In many countries the~~

The law which compatibles the EU law with U.K falls under Sec 2 of the HRA 1998 that all ~~decide~~ decision judiciary, or ~~in system~~ interpretation should take into account under Sec 2 of the convention rights of HRA 1998. It is highly commended to ~~say~~ take into account all the ~~de~~ effect of the convention rights.

Sec (3) of HRA act states that the statute should ~~t.e~~ interpreted according to the convention rights, the act must be compatible under the ~~European~~ convention rights, if the act is incompatible then a declaration of incompatibility will be declared. ~~It~~ which is the sec (4) of the HRA 1998.

The declaration of incompatibility will be issued only if it is not compatible ~~for~~ under the convention rights.

As we know that

CASE
ILLUSTRATION

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U.K is convention based,
it is ~~para~~ supreme to
it's parliament while
passing the Act under
HRA 1998, they ~~miss~~ they
set the issue under
Sec 10 (1) that if any
legislation is in compatibility
with the convention
rights then the declarat
ation of ~~incom~~ in compa
tibility will be
issued, and the
EU law will be repealed.
Ghaidan v Mai Mendoza
Hirst v UK & Greene 77

Hirst v UK is the
prisoners ban case
which the U.K govern
ment had issued for
the prisoners. ~~But~~ The
ECtHR has raised an
issue about the
infringed of their rights
of the prisoners but
according to the U.K.
they think that the

prisoners have no
rights to vote. This
Hirst v UK case was
raised ~~in~~ ^{after the} Chester
Case.

In Chester the HRA 1998
gave a great importance
to the jurisprudence.

In very important case
of sec 4 is RVA (NO2)
where the appellant
filled case against
the claimant to show
evidence in the prior
of three weeks time.
~~But the~~ But the court
disagreed with the fact
and said that the
claimant's right of
privacy will be infringe
under the 8.41 Youth
Justice Act.

The declaration of
incompatibility is
considered as the
last resort. It is
issued only when the
decision is impossible
to take. There were
total 27 declaration of

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incompatibility, where
19 where issued.

According ~~the~~ to the
legislation the Human Rights
Act 1998 had a great
impact under the sec 3, 3
4. ~~to~~ But the fact is
that according to the
David Cameron speech
in 2005 the issue raised
that HRA 1998 will be
repealed last year at
the Party ^{election} Political Party
arena ~~to~~ the conservative
party spoke ~~to~~ out that
~~it~~ they will soon
replace the British Bill
of Rights instead of
HRA 1998. ~~It~~ This is
because they want the
~~HRA~~ British government, the
Parliament to be supreme.
As the parliament is
supreme for England
the

There has been many

tensions politically regarding this speech of replacing the U.K. British Law Bill of rights.

~~As per~~ According to my view the implementation of HRA 1998 has not hampered of the Parliament as for Sec(4) of HRA 1998 the declaration of incompatibility and Sec(10)(1) of HRA ~~that~~ when legislation is incompatible with the EU law the declaration ~~can~~ of incompatibility can be issued. This was only done ~~because~~ to keep the supremacy of the Parliament