[redacted]

16 PAGE ANSWER BOOK

GCSE, GCE, VCE and GNVQ Examining Bodies

For examiner's use

[redacted]

Examining body	Edexcell
Centre number	[redacted]
Candidate number	[redacted]
Subject/module title	LAW P1
Paper reference	YLA0/01
Surname	[redacted]
Other nam	[redacted]
Candidate	[redacted]

Question number	Mark
3	
5	
7	
10	
Total	

[redacted]

- 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).

Question number

Leave blank

P.T.O

AB16

Question number

Leave blank

3. In his Nicomachean ethics Aristotle argued that law operates through ~~gren~~ general rules in pursuit of justice and is thus imperfect because it will fail to deal fairly ~~with all~~ eventualities. He will know that he was sort of right when we look into the historical background of law and rights.

Before the Norman conquest, different areas of England was governed by different systems of law. When William the conqueror gained English throne in 1066, he sent representatives to the country side to look into the local administration. When these 'roaming justice' ~~return~~ returned to Westminster, the were able to discuss and form a consistent body of rules. As a result, common law had been developed by 1250 which would be ~~followed~~ throughout the country

The judges developed the writ system. A writ is a document containing details of a claim. The rule was, 'no writ, no remedy'. ~~Some~~ litigants went empty handed and as a result, the ~~system~~ system became rigid and ruled unjustly. But the greater problem was, common law only provided remedies to damages but, some litigants might actually want the defendants to stop carrying out some activities.

Aristotle referred to ~~Epe~~ Epeikia, equity as known in its 'English form which had been developed

Question number

Leave blank

as a system to molify and soften the extremety of law. The King, fountain of justice over the time had ~~rea~~recieved many petitions from dissatisfied litigants and by the 5century, there were so many that they had to be dealt by the Kings Council. Equity, unlike the common law was a system for the individuals and provided no justice to those who came a ~~cropper~~ of technicality. It required no formality and the ~~st~~ subpoena to be issued was way more effective than that of common law, capias. ~~In the~~ The Chancellor dealt with these petitions on the basis of what was morally right.

In 1477 the Chancellor issued the first decree on his ~~h~~ name which began the independence of the ~~co~~ Court of Chanceary from the Kings Council.

Equity became popular for its superior remedies and effective procedures and its demand began to grow gradually. In Anton Piller, ~~the Court~~ of Appeal (CA) ~~reg~~ recognized as Anton Piller orders to ~~order~~ a party to freeze their assets. In Mareva, what is known as the Mareva injunction is a court order to a plaintiff being permitted to search the defendants, premises to look for the plaintiffs property. The aim is to prevent the defendant from reviving or destroying vital evidence. Lord Denning described this as 'the greatest piece of judicial reform in my time'. Specific performance is an order for the parties

Question number

Leave blank

to perform their own part of the contract. Rectification allows the parties to make changes in the contract if there has been a mispresentation. Rescission allows the parties to move back to their ~~pe~~ previous position in case there has been a misrepresentation in the agreement. Overtime a conflict between the common law and equity arose ~~in~~ which came to a head in the Earl of ~~Oxforde~~ Oxford's case. But it was decided that in case of such conflicts, equity would prevail. Common law and equity began working together side by side.

The approaches had became very popular by the 17th and 18th century but overtime the Chancearg became notorious due to delay and expense and John selden an eminent 17th century jurist had argued stating ' Equity varies with the length of Chancellors foot. But Lord Nottingham to combat this criticism, established some ~~equitable maxims~~ stating, ~~those who~~ delay defeats equity, those who seek equity must do equity and those who seeks equity must come with clean hands. But the bigger problems were faced by those who had to seek common law and equity in different courts. Thus, ~~Judicate~~ Judicature Act 1873 ~~and~~ -75 by formed from which S25 states in case of any conflict between these two approach equity would prevail But, what had begun as a system of cheapness,

Question number

Leave blank

ease and a way to assist the poor had turned into a system ~~to~~ of delay, protracted system for the wealthy by 19th century. Which, could be however overstated as it has brought light to the end of so many disputes and ~~on t~~ has brought hope to so many people and had made a step forward to the development of the legal system to provide justice. It can be said that common law and equity are two streams that have met and flow into the same river but their waters do not mix. That is how strong ~~thing~~ these approaches are while maintaing their relationship.

AGREE - JUDGES TO GO FOR GRASP OF EQUITY

[redacted] This is to deal with other issues but focus is on equity

5 A significant change in the British position was made by the ~~the~~ Human Rights Act 1998 (HRA). ~~UK HC~~ European ~~Majorit~~ HRA incorporates magority of the rights protected by the European Convention on Human Rights (ECHR).

In 1949 ECHR was drafted and approved by the member states in 1951. The British Government strongly preserved the rights under this convention and it was not until 1965 that the government gave individuals the right to petition.

Before the HRA, ECHR acted as a persuasive

Question number

Leave blank

force (not binding) on courts in domestic law. Judges could use the ECHR as an aid to interpretation but had no jurisdiction as to enforce the rights under the convention. In ~~order to~~ order to enforce convention rights, an application had to be sent to European Court of Human Rights (ECtHR) in Strasbourgh. Further, there was a long running debate that the convention rights in UK was not upto the international standards. After the formation of the Labour Government, HRA era came to being.

R(L) V SSHD (2007) provided that death or serious injury of a person in custody is a breach of Art 2 (right to life). Similar issue of Art 2 along with Art 3 (freedom from torture and degrading treatment) arose in Al-Skeini. Von Colle can also be mentioned here. In ~~Astef~~ ASLEF V UK the legal restriction preventing the union from expelling Mr Lee was a violation of Art 11 (freedom of association). HRA was designed to ensure Art 10 (freedom of association) even against claims of ~~invasion of~~ privacy ~~by~~ but the courts are quickly developing Art 8 (right to privacy) which is encroaching on press freedom. (Douglas V Hello!).

HRA incorporates majority of the rights protected by the ECHR in the declaration or ~~Art~~ S1. S2 provides that judges must

Question number

Leave blank

take into consideration the decisions of ECtHR even though they are not binding. S3 states that the courts must interpret 'so far as possible' giving effect to the rights protected under the convention. Firstly it was thought that it could be used for ambigious provisions only but in RVA it was stated that it could be used for unambigious provisions as well. In Wilson's case the judges provided an independant judgement to comply with the convention rights, not the ordinary principle to statutory interpretation. In Mendoza, the courts looked beyond the enacting statute to look into the historical context of the statute. But if the words of the did not match the express words of the statute, it was termed as 'randalism'. S4 provides declaration of incompatibility only by superior courts as seen in Wilson and Mathews case. S6 says all public bodies must act compatibly to the convention rights. S6(3) defines public bodies as courts and tribunals and any body whos function is public in nature and is funded by the government except the parliament. The undifined dividing line between public and private function seem to be causing disputes as seen in YLCV BCC-02. By the virtue of S19 and 15, it is possible for the state to dismiss an Article if it is impossible to comply with it as seen in Borgan V UK where the state dismissed

B3 citation?

Question number

Leave blank

Art 5 subject to suspected terrorists.

There are a couple of areas where HRA's protection falls short as. Crucially taking Art 13 (right to effective remedy) is not incorporated, instead S8 says remedy that is just and appropriate ~~may be awarded~~. It is further argued ~~that~~ that HRA has no higher status than ~~one~~ any other statute but it can be said that HRA is a constitutional statute as recognized by Hoffman Lord Justice in Simms case and even the the doctrine of implied repeal may not function to repeal this act. However if we think further, it is not because of ~~the~~ ECHR that the judges are following the convention rights but because of the HRA. Thus, Parliamentary Sovereignty remains intact as the supreme law making body and it can be said that HRA is a logical step forward for a government who is dedicated towards providing individual rights to its citizens which is at the same time protecting the seperation of powers and the fact that no one has the right to declare ~~the~~ an Act of the Parliament invalid proves that HRA is an act no conflicting on the supreme powers of the UK parliament.

[redacted]

Rather than examining judicial interpretation, eg. s. 2, 3 etc we response looks at the past case of the HRA — not the question set

[redacted]

Question number

Leave blank

7. The Doctrine of Judicial Precedent (JP) is ~~concerned~~ concerned about the importance of case laws in English Legal System. If a case have decided a point of law, it is logical for the solutions to be looked at in the future. The American Judge Oliver Wendell said, 'the life of law ~~is~~ has never been logic, it has been experience? Miles Kingston put it another way, ~~"Judicial~~ 'Judicial precedent is a trick, that has been tried before successfully."

According to Sir Rupert Cross JP indicates, All courts must consider relevent case laws. Secondly, the lower courts are bound by the higher courts. Finally, the appelate courts are usually bound by their own decisions. As Lord Hailsham the then LC put it; "in the hierarchical system of courts available in this country, it is necessary for the lower tiers to accept loyally the decisions of the higher tiers.

Before going into further discussion, the case R V James and Karimi (2006) need to be discussed as it has brought some confusion into law. In James and Karimi the Court of Appeal (CA) did not follow the precedent of Morgan (Smith) [2005] which was a decision of House of Lords instead they followed the precedent of the Privy Council in Holley (2005). Lord Phillips in James and Karimis ~~state~~ stated that it was the law

Question number

Leave blank

lords of a who have altered the established approach to precedent and it will bring to impacts on law: i) it will throw the law into great uncertainity, ii) it will confuse the lower courts as when to follow the precedent of the CA or the House of Lords or the Privy Council. Such radical steps though argued as 'exceptional' one cannot argue that it has changed the orthodox way of looking into the precedent. It has been stated that such radical approach taken by the judges was to assist the administration of justice.

The Law Lords adopted the similar reasoning in their 1966 practice statement where they said that normal case laws would usually be considered as binding but to depart from the precedent when it appears right to do so.

In Young V Bristol Aeroplane Co. Ltd a full Court of Appeal of six members decided that the Court of Appeal Civil division was normall so bound subject to the following 3 exceptions:

i) When a decision of the CA conflicted its own decision, CA would decide what to follow and what to reject

ii) When a decision of the House of Lords conflicted that of CA, but the House of Lords did not overrule the decision, CA may follow

Question number

Leave blank

their precedent.

iii) When a decision had been given per incuirium.

ECJ decisions are to be considered as binding and the ones of ECtHR to be persuasive.

In the CA Criminal Division, when somuones, liberty is at stake, precedent may not be followed so rigidly.

The process of overruling (Anderton v Ryan was overruled by R v Shivpuri), distinguishing and reversing gives judges some room to make law. Sir William Blackstones declaratory theory however, decribes that, the role of the Judges is the one to say law and not to give it. Terminology in a statate may be vage or ambigious, developements in sound life might have to be made, then the judges can upto some extent make law. But other than that, where precedents do not spell out the JP remains intact. Historically a great deal of our law has been made by judicial decisions ie, Tort and contract Law.

Lord Devlin distinguished between dynamic and activist law making. He saw developement going through the long process of acceptance. But the problem with Devlin's view is that, sometimes judges have no choice but to embark on dynamic law making.

Question number

Leave blank

Judges ~~never the~~ nevertheless have to make law. It must be noted that CA's decision to depart from the precedent of the House of Lords must not be taken as a general license to depart from the JP. It is correct that the criticism says CA shouldn't have done so but it should be that the House of Lords should also adopt Hollegs decision. However in presence of the both parties a more favorable stance which is flexible is preferable Thus, it can be stated the the Doctrine of Judicial Precedent remains intact but its loyalty is upto the Judges and also the process is developed from common law so, Judges should have a chance to make changes for the good as too much rigidity is not always a point of strength as stated by Lord Nicholls in spectrum but yet Blackstones theory remains intact keeping consistency in the legal system. Since limited legal authority. evade rule

A Stark response to precedent - no discussion of the legal certainty / consistency aspect.

10 The most emphasized legal question and political issue connected with UK's membership with European Union is its impact on the traditional concept of Parliamentary ~~Parliamentary~~ Sovereignty. Lord Denning once said 'EC treaty is an upcoming tide. It flows into the estuaries and up the rivers and it cannot be held back.' Whilst [E] The domestic courts

FLEXIBILITY IS BROUGHT IN CN P11 E.G. ANALYTICAL ENOUGH FOR

12

Question number

Leave blank

are not bound by the sources of European Union(EU) by precedent, EU has consistently sought to strengthen and expand its superiority of EC Law ~~over~~ (European Communities Law) over domestic ~~law.~~

UK became a part of the European Communities with effect from January 1st with the enactment of the European ~~Communities~~ Communities ~~Act is 1972~~. The significance of this act is that from the day it comes into force all EC law becomes a part of the domestic law. S2(1) ECA provides that, all community law shall have direct applicability in domestic law. S2(4) states that all the legislation enacted after 1972 shall be construded and given effect to the community law. S3 states that European Court of Justice (ECJ) decision are binding.

There are essencially 5 sources of EU Law; Treaties, decisions, regulations, ruling of ECJ and directives. Of these treaties, regulatios, decisions and ruling of ECJ are directly applicable. Directives have 'direct effect' if clear and unconditional. In situations where 'direct effect' is not possible, 'indirect effect' is to be carried out but the courts have to then, interpret the law in the light of the wording and purpose of the directives. ECJ have

Question number

Leave blank

established both horizontal effect(against individual) and vertical effect(against government) in case of treaty provisions and regulations but they have never actually ~~regog~~ recognized the horizontal effect of directives.

The ruling of EC law ~~have~~ been developed by ECJ. In Van Gend En Loos, it was stated ~~tha~~ that, 'by entering into the EC treaty, the states have limited their soverign powers for the advantage of it'. It was further explicitly stated in Costa V ENEL that the courts have limited ~~their~~ soverign rights ~~ben~~ by entering into the EC treaty and that community law cannot be overriden by domestic law. However in Factortame the court set aside parliaments precedent and granted interim relief against the ministers of the crown. In Macarthy's and Garland it was stated that 'if the parliament expressly wants to legislate statutes contrary to the community law, the judges can give effect to this view.

A V Dicey stated that parliament is a supreme law making body and has the right to make law in any subject matter. example: Spetinel Act. His second principle states that no parliament is bound by its successor or predecessor meaning all parliament shall have the right to

Question number

Leave blank

enjoy its soverign rights. Superiority is upheld by doctrine of implied repeal. Thirdly he said that no individual or court has the right to declare an Act of the Parliament as invalid. Though, ~~in The~~ the ECA is argued to be a constitutional ~~statute~~ and in Bulmer V Boilenger it had been stated, that the courts should always interpret domestic law in light to EC Law, the judges argue that the follow the EC law not for the EC treaty but for the ECA which indicates that even though a bit shaken, Dicey's theory is ~~still~~ a part of the constitution and ~~that~~ the Parliament of UK has soverign rights ~~which~~ are still intact even though ~~direct~~ approaches like direct effect and indirect effect etc have been developed. Thus, I agree to the ~~statement that~~ the traditional concept of Parliamentary Soverignty still survives.

Basic account of Dicey -

Some attempt to discuss relevant cases -

Some attempt at addressing impact on UK law -

[redacted]

Question number

Leave blank