

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS
General Certificate of Education
Advanced Subsidiary Level and Advanced Level

LAW

9084/02

Paper 2 Data Response

October/November 2005

Additional Materials: Answer Booklet

1 hour 30 minutes

READ THESE INSTRUCTIONS FIRST

If you have been given an Answer Booklet, follow the instructions on the front cover of the Booklet.
Write your Centre number, candidate number and name on all the work you hand in.
Write in dark blue or black pen on both sides of the paper.
Do not use staples, paper clips, highlighters, glue or correction fluid.

Answer **one** question.

At the end of the examination, fasten all your work securely together.

The number of marks is given in brackets [] at the end of each question or part question.

This document consists of **3** printed pages and **1** blank page.



Answer **one** of the following questions.

You should make appropriate reference to the source material supplied after each question.

- 1 (a) Identify the type of delegated legislation referred to in the case and by whom it is made. Describe one other form of delegated legislation. [5]
- (b) Identify the enabling Act mentioned in this case and briefly describe its purpose. [5]
- (c) Explain the meaning of the term *ultra vires* as used in source 1.1. Why was it significant in this case? [5]
- (d) Explain why delegated legislation needs to be controlled and analyse how control is exercised. [10]

Source 1.1

Name of case *Hotel and Catering Industry Training Board v Automobile Proprietary Ltd [1969] 2 All ER 582*

In this case the Board asked the court to decide whether the Industrial Training (Hotel and Catering Board) Order 1966 made by the Minister of Labour, pursuant to powers conferred upon him by the Industrial Training Act 1964, was *ultra vires* in so far as it purported to extend to members' clubs. If the order was *ultra vires*, the RAC club in Pall Mall was not liable to pay taxes to the Board by reason of its activities in providing midday and evening meals and board and lodging for reward.

The relevant order was made under section 1 (1) of the Act of 1964, which provides that the Minister may 'for the purpose of making better provision for ... training ... for employment in any activities of industry or commerce' make an order specifying 'those activities', and establishing a board to exercise the functions of an industrial training board.

Held – by the House of Lords – that the general object of the Act of 1964 was to provide employers in industry and commerce with trained personnel and to finance the training by taxing employers in the industry, that it was not intended to allow taxes to be made on private institutions like members' clubs.

- 2 (a) Discuss briefly whether each of the following actions is unlawful and/or immoral:
- (i) Shaun was visiting friends in an unfamiliar part of town and found himself driving on the wrong side of the road. [5]
 - (ii) Josephine was terminally ill and spent most of the time in terrible pain. On Josephine's request, her doctor administered to her a fatal dose of a drug, soon after which she died. [5]
- (b) What does it mean to 'corrupt public morals' as discussed in source 2.1? [5]
- (c) With reference to source 2.2, comment on the views of Lord Templeman and Lord Slynn on the role of the courts in the law-making process. [5]
- (d) Define what is meant by 'judicial precedent' and analyse the extent to which it enables the law to keep abreast with changes in society. [10]

Source 2.1

Name of case *Shaw v Director of Public Prosecutions [1961] 2 All ER 446 HL*

Shaw published a booklet called *The Ladies Directory* which contained names and addresses of prostitutes, their photographs and details of the services they provided. Shaw was convicted of conspiracy to corrupt public morals and his appeal eventually reached the House of Lords. His appeal was dismissed and his conviction affirmed. However, Lord Reid, in a strong dissenting judgment, said that in his view there was no such general offence known to the law as conspiracy to corrupt public morals and the court in convicting Shaw of it was creating a new crime on the basis of public mischief which is the criminal law equivalent to public policy. He thought that if the courts had stopped creating new heads of public policy in, for example, the civil law of contract, then they certainly should refrain from doing so in the criminal law.

Source 2.2

Extract from some of the judgments in the case of *R v Brown & Others [1993] 2 All ER 75, HL*

Lord Templeman: 'The question whether the defence of consent should be extended to the consequences of sadomasochistic encounters can only be decided by consideration of policy and public interest.' At the end of this judgment he also said 'Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilized.'

Lord Slynn: 'Adults can consent to acts in private which do not result in serious bodily harm, so that such acts do not constitute criminal assaults for the purposes of the 1861 Offences against the Person Act. In the end it is a matter of policy in an area where social and moral factors are extremely important and where attitudes could change. It is a matter of policy for the legislature to decide. It is not for the courts in the interests of paternalism or in order to protect people from themselves to introduce into existing statutory crimes relating to offences against the person, concepts which do not properly fit there.'

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