This booklet consists of real exam questions from a past paper, genuine student responses, and marks/comments from the Principal Examiner. Each question and its accompanying mark scheme are given in full, and the commentaries are grouped together at the end of each Section of the paper, so that you or your students can have a go at assessing/marking each answer without anything to influence your judgment, before checking your marks against those of the Principal Examiner.
Contents

Section A: Law Making ..................................................................................................................... 4
  Topic: Parliamentary Law Making ................................................................................................4
  Topic: Delegated Legislation ...................................................................................................... 10
  Topic: Statutory Interpretation ................................................................................................. 16
  Topic: Judicial Precedent ......................................................................................................... 22

Section A: Commentaries ....................................................................................................... 28
  Topic: Parliamentary Law Making .......................................................................................... 28
  Topic: Delegated Legislation ................................................................................................... 29
  Topic: Statutory Interpretation ............................................................................................... 30
  Topic: Judicial Precedent ....................................................................................................... 31

Section B: The Legal System .................................................................................................. 32
  Topic: The Civil Courts and other forms of dispute resolution ............................................. 32
  Topic: The Criminal Courts and lay people ......................................................................... 38
  Topic: The Legal Profession and other sources of advice, and funding ................................ 44

Section B: Commentaries ....................................................................................................... 50
  Topic: The Civil Courts and other forms of dispute resolution ............................................. 50
  Topic: The Criminal Courts and lay people ......................................................................... 51
  Topic: The Legal Profession and other sources of advice, and funding .............................. 52
Section A: Law Making

Topic: Parliamentary Law Making

0 1 Outline the following:
  • The law-making process in the House of Lords and
  • The doctrine of Parliamentary supremacy (sovereignty).

[10 marks]

Potential Content

(A) Outline of process in the House of Lords:
  • introduction of Bill by Minister for a Government Bill or promoter for a private member’s bill
  • order of readings – first reading, second reading, committee stage (whole House), Report stage, third reading
  • general amending role looking at legislation passed by Commons; if Bill has been amended, it goes through ping-pong procedure in conjunction with House of Commons until final agreement has been reached on wording of all clauses.

Enhancement
Reference to different forms of Bills (Private, Public and Private Members); possible reference to constitutional role of Queen in Parliament and effect of Royal Assent bringing a Bill into force; possible reference to Parliament Acts 1911 and 1949.

For Sound (A) – all three bullet points to be outlined.

(B) Outline of doctrine of Parliamentary supremacy (sovereignty):
  • legal supremacy (sovereignty) (highest form of law, must be applied by judges, Parliament not being able to bind its successors).

Enhancement
Political sovereignty – that the electorate can vote a Parliament out at the next election.
Student answer for consideration

The law making process in the House of Lords begins with the 1st stage which is the reading stage. The speaker will read out the general principles of the Bill and a brief summary of it and then the House votes on whether it will get to the second stage. When taken to the second stage, the House will debate and discuss the Bill further but no amendments are made. Another vote is cast to take it to the Committee stage. At the committee stage, there will be 16-80 MPs with particular interests in the Bill or they have a specialism in that area. They will scrutinise the Bill clause by clause and make any amendments to the Bill. At the third stage, the house will look at the amendments and make further amendments if needed. However, in the House of Commons, at the 3rd reading, they are not allowed to make amendments. Once the Bill has been passed in the House of Lords, it will be sent to the House of Commons. If the House of Commons make any amendments the House of Lords will have to debate it further. Passing a Bill back and forth from each house is called “parliamentary ping-pong”. The House of Lords can delay a Bill for up to a year. Once the year is over the Bill is passed and is sent for Royal Assent by the Monarch.

Dicey had a theory about Parliament being supreme. Firstly he said that Parliament can make law on any topic. For example, if parliament said everyone has to eat jaffa cakes on a Friday everyone in the UK have to abide by that law. Secondly he said that no-one can question or undermine Parliamentary law; courts have to follow parliamentary law. Thirdly, Dicey said that no one parliament can bind its successors. This means that parliament in 20 years’ time won’t be bound by what parliament has done in today’s Parliament.

However, in 1973, the UK joined the EU. Joining the EU means that the UK’s parliament lost some of their power to the EU. European Constitution of Human Rights, states that people who join the EU have to follow EU law. EU supremacy was established in the case of Costa where the EU said as Italy joined the EU, it lost some of its power to them. The UK case of Factortame where Spanish fisherman were fishing in UK waters. UK Merchant Fishing act states there had to be a certain amount of English people in the boat. EU said it went against their movement of work and was discriminating against nationality.

We can leave the EU if the PM says we have a referendum (a vote) on whether the UK leaves the EU.
Describe pressure groups as an influence on Parliamentary law making.

**Potential Content**

**(A) Description of pressure group as an influence:**
- general description of the meaning of pressure group, including reference to the different types of group (insider and outsider, sectional and cause groups), how, when and whom they can influence – insider groups likely to be involved in the drafting of a Bill and may be consulted by minister or civil servants; sectional groups likely to be consulted when legislation is being drafted that affects their group of members; consultation may be arranged following lobbying; direct action such as strikes or demonstrations likely to be used by outsider or cause groups who may not be consulted in law making process
- the effect of influence by reference to campaigns or example(s) – successful such as Snowdrop, unsuccessful such as Fathers4Justice.

Note: for Sound (A) – all three bullet points to be described.
Student answer for consideration

Pressure groups are groups of individuals are people campaigning for changes in the law. They can range from individuals to a network or millions, eg National Trust with over 2 million people part of it. They use a range of methods, such as lobbying, contacting their MPs and the media.

Major sectarian groups are often more influential as they contain huge numbers of wealthy people whose support the Government want. An example is the Law society. The Government are unlikely to pass a law directly affecting them. As they are wealthy, they are able to conduct expensive research to support them (if they were ever in need to influence Parliament).

Cause groups are pressure groups who campaign for a cause or belief. They are often considered outsider groups because they don’t have much direct contact with the Government. The RSPCA is an example. They use the media such as touching TV advertisements showing abused animals to try put their point across and petitions. They have succeeded in making Parliament process laws of stopping animal cruelty.

Often individuals campaign for change in Parliamentary law-making such as Jamie Oliver, with his ‘tour for healthy eating’ in schools. With his specialist knowledge and pressure group publicity he has succeeded in getting the Government to pass laws on school dinners containing fatty food and fizzy drinks and more meat, fruit and veg and portions of potatoes. His pressure group and campaigning brought about by his tv programme and tour, helped raise awareness of the importance of children’s healthy eating and how it can affect their behaviour.

Insider groups, such as the Law society have direct influence in Parliament whereas outsider groups don’t.

Fathers for Justice (an outsider group but often considered an insider group recently) has resulted to extreme means to promote their point of fathers seeing their children. They have tied themselves to building and performed other stunts.
Briefly discuss advantages and disadvantages of pressure groups as an influence on Parliamentary law making.

[10 marks + 2 marks for AO3]

Potential Content

(A) Brief discussion of advantages of pressure groups as an influence could include:
- can raise public awareness of issue and keep Parliament/MPs in touch with issues of public concern
- many are non-political but can influence all political parties
- will have expertise on their issue
- for some groups, eg National Trust or TUC, the size of their membership means they can be representative of general public and be more influential as they will have large budgets and be able to afford media campaigns
- some groups can provide international experience and contacts
- insider groups have the ear of decision makers and can be consulted on proposed changes
- likely to be successful if they have media support.

(B) Brief discussion of disadvantages of pressure groups as an influence could include:
- undemocratic as leaders unlikely to be elected by membership
- they are not likely to be objective and will provide one side of an argument only
- outsider groups can use undesirable/illegal tactics to get publicity and to promote their view
- can represent small number of members and have limited funds
- outsider groups unlikely to be consulted or influence decision makers
- unlikely to be successful if no media support for their issue
- can have disproportionate influence.

Note: for Sound (A or B) at least two bulleted points should be briefly discussed. Alternatively, Sound (A or B) can be awarded if four or more bulleted points are made without development.
Student answer for consideration

Pressure groups can help bring awareness to matters of concern, by their clever use of media. ‘All out’ a pressure group promoting the equal rights of lesbians and gays often use modern media, such as Facebook and big publicity events such as marches to help make people aware of the abuse some homosexuals face. The organisation and multiple uses of media, taking careful planning and often a vast amount of time is in particular an advantage.

In addition, they help remind the Government on matters of concern they may have forgotten about. The Government may be so engrossed in making new political law, they forget about other issues the world faces. Greenpeace, promoting issues about global warming, have brought attention to the link between petrol car usage and global warming. This matter is now more regularly thought upon.

Pressure groups often contain large amounts of people, for example the National Trust with 2 million. This can further help them to draw attention, emphasise and influence Parliament.

However, pressure groups are often biased to their point. As they feel so strongly about their topic, they may fail to see the point of view on both sides. For example Fathers for justice often fail to see that mothers and the Government have the children’s best interests at heart.

Also they often resort to immoral means of protesting, such as animal testing conservationists have threatened scientist workers and smashed up laboratories. This causes many problems, causes havoc and sets a bad example.

Also, some pressure groups represent only the beliefs of a small number of people, but if use the media well enough, they can influence Parliament.
Topic: Delegated Legislation

Statutory Instruments, By-laws and Orders in Council are all different forms of delegated legislation. Briefly describe any two of these forms.

Potential content

(A) Brief description of first form of delegated legislation.
(B) Brief description of second form of delegated legislation.

Forms of delegated legislation could be:

- statutory instruments – the existence of law made by government ministers with delegated powers under authority of primary legislation (enabling Acts), example(s).
- By-laws – made by local authority and other bodies, require authority of enabling Act or government minister, example(s)
- Orders in Council – made by Privy Council, can make laws when Parliament is not sitting/use in emergencies/dissolving Parliament/reorganise responsibility of government departments/commencement orders, example(s) of Orders

Note: for Sound (A) or (B) – all elements of each bullet point to be briefly described.
Student answer for consideration

Statutory instruments are made by government ministers in areas affecting their responsibilities. They are drafted by civil servants who have expertise in that area also.

Statutory instruments are required for many different reasons. One, to add detail to the general policy of the enabling Act which is too complex for the enabling Act. As in the Hedgerows Regulations 1997 which was made by civil servants concerning important environmental issues like established hedgerows. This was made under the Environment Act 1995 and was passed by the Secretary of State of Environment.

Another reason for statutory instruments is to enable the updating of financial qualifications as in the updating of the national minimum wage under the National Minimum Wage Act 1988.

Orders in council are made by the Privy Council and the Monarch and are made under various enabling Acts or through on Royal Prerogative.

Orders in councils can be used in the event of an emergency as in the order or council banning the over flight or flights over London on 9/11 under the Emergency Powers Act 1920.

They can also be used to bring in commencement orders which will state when an act or part of an act will come into force as in the Railways Act 2005 where part of the act came into force in January 2007.
Describe judicial controls on delegated legislation.

Potential Content
Description of judicial control could include:

• judicial review can be claimed on grounds of procedural ultra vires, examples such as imposition of tax, lack of consultation
• judicial review can be claimed on grounds of substantive ultra vires, examples
• judicial review can be claimed on grounds of unreasonableness, examples
• judicial review can be claimed on grounds of delegated legislation being in conflict with EU law, examples.

Note: for Sound (A) at least two of the bulleted points are described, supported by a case example.
Student answer for consideration

Judicial controls are needed due to the sheer volume of delegated legislation. There are two main types of judicial controls, one being judicial review and the other being the possible outcome of the review, ultra vires.

Judicial review is an application to the High Court to review the lawfulness of a decision made by a public body. It will be made by an interested party and heard in the Administrative court. If in the review the legislation has done beyond the powers set in the enabling act it will be declared ultra vires and quashed. Ultra vires means 'beyond the powers'.

There are two main types of ultra vires. Firstly, procedural ultra vires. Here, if the law making process goes beyond that set in the enabling act or does not follow it, it will be declared procedurally ultra vires and quashed. As in the Aylesbury Mushroom case; there they failed to consult 85% of the mushroom growers, which was made up of the Aylesbury Mushroom Association. This was declared ultra vires as it failed to consult those who were affected by the legislation.

The second type of ultra vires is substantive ultra vires. Here, if the context of the legislation goes beyond that set out in the enabling act it will be declared void, as in the case of AG v Fulham Corporation. Here the corporation was permitted to provide washing facilities to the public. However they went beyond this by opening a commercial laundry. This was not permitted in the enabling act and so declared ultra vires.

Another way a piece of legislation can be declared ‘ultra vires is if it is considered to be unreasonable, the Wednesbury test, if it is so irrational, it will be declared ultra vires. This was shown in the case of Strictland v Hayes Borough Council.
Discuss advantages of delegated legislation. [10 marks + 2 marks for AO3]

Potential Content

(A) Discussion of advantages of delegated legislation could include:

- saves parliamentary time allowing parliament to focus on major issues
- that delegated legislation can be made quickly because it does not have to go through either/both houses and can be used in the case of emergency, with example(s)
- that often it is made for technical reasons to fill in the gaps in primary legislation and experts can be consulted for specific detail, example(s)
- flexibility – different rules can be introduced in different areas (by-laws) as required by local need, or to deal with specific issues, example(s)
- statutory instruments can complete the detail of framework Act, or deal with regular amendments, such as the change in the annual amounts of the minimum wage
- some form of control by either Parliament or the judiciary is possible
- some form of democracy involved, as by-laws made by local politicians and statutory instruments made by or in the name of elected ministers.

Note: for Sound (A) – at least three bulleted points should be discussed and, if appropriate, supported by an example.

Alternatively, Sound (A) can be awarded if five or more bulleted points are discussed without development.
Student answer for consideration

The main advantage of delegated legislation is that it saves a vast amount of Parliament's time. Parliament is the supreme law-maker and so should concentrate on the major policy issues such as the intervention on Syria or the NHS. Not minor local issues such as the bylaw such as Camelsdale recreation ground. It is also important that they focus on major issues as Parliament only sit for around 30 weeks per year and so time would be wasted.

Another advantage is that delegating legislation allows it to be made by those who have specific knowledge and expertise. Such as the Hedgerows Regulations 1997 which was made by civil servants with expertise in environmental issues. This is an advantage as MPs lack technical know-how and lack the local knowledge that may be required. However, this may be a disadvantage as the legislation may be considered to be rubberstamped by the relevant minister, instead of being fully checked.

A final advantage is that they can be flexible. Orders in Council, for example, can easily be made and revoked quickly in response to the circumstances. For example, the banning of flights over London on 9/11. This is an advantage as they could potentially save lives. However, this could be a disadvantage as they may not be fully checked due to the urgency of the need.
Topic: Statutory Interpretation

0 7 Outline the following:

- internal (intrinsic) aids to interpretation and
- external (extrinsic) aids to interpretation.

[10 marks]

Potential Content

(A) Outline of internal aids could include:

- long and short titles
- preamble
- definitions
- interpretation section
- schedule.

(B) Outline of external aids could include:

- authorised dictionary of the year the Act was passed
- an external treaty entered into by the UK, eg the Treaty of Rome, if the word is defined there
- a report (such as a Law Commission report) on which Act is based
- if the word is included in the Interpretation Act 1978 (‘he’ includes ‘she’)
- if the word has been discussed in a Parliamentary debate and included in a Hansard report.

Note: for Sound (A) or (B) - at least two of the bulleted points should be outlined, supported by an example.

Alternatively, Sound (A) or (B) can be awarded if four or more bulleted points are outlined without examples.

Enhancement
Definition of internal and/or external aids.
Student answer for consideration

There are two different forms of aids available to judges which help them to interpret statutes given to them by parliament, the first form are intrinsic aids which are aids within the statute itself. An example of an intrinsic aid is the short title which is the title at the top of the statute of what it is called like "the theft act" this will let the judge know that it is a property offence and it is theft in one of its forms. Another intrinsic aid is the explanatory notes which are used when parliament attaches notes to the statute in order to explain any confusion that can be created by the wording of the statute, these often can shed light on the definitions of the words used. Also used is the long title which will outline the full title of the offence such as in theft "to dishonestly appropriate property belonging to another with the intention to permanently deprive." This shows how the full title gives a lot more information for interpretation than the short title.

The other form of aid is known as extrinsic aids which are aids to interpretation outside of the statute. An example of an extrinsic aid is the Oxford English dictionary. Often it is hard for the judge to decide the meaning of words in the statute without knowing the dictionary meaning of specific word. Also used is Hansard which was initially not allowed in Davis v Johnson but was then overruled in Pepper v Hart.
0 8 Describe the literal rule of statutory interpretation.

[10 marks]

Potential Content

(A) Description of literal rule could include:
- judges giving words their ordinary natural (Oxford English) dictionary meaning, even if it results in an absurdity; case examples to illustrate the application of the rule.

Enhancement
Possible reference to words getting the same meaning throughout the Act; words in an old statute being given their meaning at the time of the passing of the Act.

Note: for Sound (A) the rule to be accurately described using at least one developed case example or at least two case examples briefly developed.
Student answer for consideration

The literal rule is one of the four rules of interpretation. It is a rule favoured by Lord Simmonds and out of the four respects parliamentary sovereignty the most. This rule means that it must follow exactly what is in the statute and nothing less and nothing more. The only extrinsic aid these judges will use is a dictionary of the time. A case displaying the literal rule is Whitley V Chappell where a man claimed to be a dead person in order to take his vote. He was charged with impersonating someone entitled to vote but the court applied the literal rule and said that a dead person is not entitled to vote and quashed his conviction.
Describe the literal rule of statutory interpretation.

Potential Content

(A) Brief discussion of advantages could include:
- judges applying the will of Parliament, and democratic as unelected judges are not making law, merely applying law passed by Parliament
- predictable as the same meaning is given every time a word is used in an Act
- the result is certain so lawyers can advise their clients on the likely outcome.

(B) Brief discussion of disadvantages could include:
- rigidity – judges have no discretion so if a bad precedent or an absurd result is made then judges cannot provide justice in individual cases, eg Berriman
- the rule cannot be used if words to be interpreted are not in an Act or if the words can have more than one meaning
- the rule assumes that the Act is perfectly written
- possible need for Parliament to rectify error following case, eg Fisher v Bell
- there is an assumption that Parliament meant the result which the rule achieves.

Note: for Sound (A or B) at least two bulleted points should be briefly discussed, supported where appropriate by examples.
Student answer for consideration

An advantage to the use of the literal rule is that it upholds parliament supremacy, this is important because parliament is intended to be the highest power in the country and can’t be overruled, except by the EU, and so if judges then start interpreting the law differently to how parliament has intended this erodes parliamentary supremacy.

Another advantage of the literal rule is that it’s democratic and this supports the idea of parliament supremacy because the house of commons is part of parliament and they are voted in by the public and so they have been chosen to make the law whereas judges don’t need any public approval to be able to make decisions on the law so they should follow those that have been chosen to create laws.

A disadvantage of the literal rule is that it can lead to absurdity. This occurred in LNER v Berriman where a worker was killed when cleaning points on a railway track. In the act designed to protect those who worked on the railways, it was stated that "a worker who is repairing or replacing the track must be supplied with a look out." The court took the literal definition provided to decide that the worker was neither repairing nor replacing the track. Instead he was cleaning or even maintaining it and so therefore the company was not liable for not providing a lookout. It is obvious that this is absurd as both jobs involve the same danger but the literal rule meant that the exact wording must be followed. This was unfair to Mrs Berriman who received no compensation despite her husband not being at fault.

Another disadvantage of the literal rule is that it allows for poor draftsmanship within statutes to go unchecked as the court follows exactly what is written even if it is written per incuriam (in error). Another advantage of the literal rule is that it creates certainty within the law which helps save court money and time as judges, lawyers, defendants and the general public know what will happen.
### Topic: Judicial Precedent

<table>
<thead>
<tr>
<th>10 marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the context of judicial precedent:</td>
</tr>
<tr>
<td>• outline what is meant by the term <em>obiter dicta</em> and</td>
</tr>
<tr>
<td>• briefly describe the relevance of law reports.</td>
</tr>
</tbody>
</table>

#### Potential Content

(A) Outline of obiter dicta:
- other things said by the way
- the non-binding part of the decision which does not have to be followed by other judges
- may be persuasive in later cases.

(B) Brief description of relevance of law reports could include:
- the need for reporting to publicise judgements, and statements of law for lawyers and judges, and being used as precedent in later cases
- an accurate and authorised record of the reasons for the decision
- examples of different series of reports
- content of report
- written by specialist lawyers.

Note: for Sound (A) outline should be supported, where appropriate, by an example.
Student answer for consideration

The term Obiter Dicta is found within Law reports. Obiter Dicta means ‘other things said’ within a Law Report. Law reports are a summary of facts, points of Laws and verdicts within a case. They allow for judicial precedent to be followed. Judicial precedent is knowing which court to follow in the court hierarchy and the use of Law reporting to follow the Ratio Decidendi (point of law), which must be followed. The obiter Dicta will be in the law report. It isn’t legally binding but highly influential for future cases. For example, in the case of R v Howe, the point of law was that Duress is not a defence to murder. The Obiter Dicta was that Duress is no defence to attempted murder. This Obiter Dicta was turned into Ratio Decidendi in the case of R V Gotts.

The Relevance of law reports in knowing which previous precedent to follow in certain cases. Law reports became electronic in the 1980’s and are available, for example, on the Lexis nexis. Law reports are written to guide judges and lawyers on points of law and on general precedent. For example, the original precedent in Donoghue V Stevenson was a duty of care. Law reports allow future cases to follow this.
In the context of judicial precedent:
- outline what is meant by the term obiter dicta and
- briefly describe the relevance of law reports.

(A) Description of how judges in the Supreme Court can avoid binding precedent:
- using the 1966 Practice Direction
- alternative powers to overrule or distinguishing a previous precedent.

Enhancement
Disapproving or any other method of avoiding precedent.

Note: reversing a precedent is not within the specification. However, an answer which refers to reversing in the context of overruling or otherwise avoiding a precedent can be credited.

Note: for Sound (A) – description of both bullet points, supported by case example(s).
Student answer for consideration

Judges in the Supreme Court can avoid following previous precedent through the use of the Practise Statement, Overruling and Distinguishing.

First is the Practise Statement. The Practise Statement was written in 1966 by Lord Gardiner. It allows the Supreme Court, only, to depart from their previous decisions 'where it appears right to do so.' In the case of Addie and Sons v Dumbreck the House of Lords (now the Supreme Court) said no duty of care was owed to child trespassers. This was then avoided using the Practise Statement in BRB V Herrington when a child was burnt on a railway. They changed the point of law as 'it appeared right to do so' so that after this case a duty of care was owed to child trespassers.

Second is distinguishing. Any Court can use this. The judge will regard the fact as sufficiently different to avoid following the precedent. In Balfour v Balfour, a couple couldn’t make a contract between one another as they were married. In Merrit V Merrit, the couple were separated and the judge used the separation to distinguish the previous decision.

The third is overruling. The Supreme Court can overrule any decisions made by lower courts, eg the Court of Appeal. However, the Supreme Court must follow the European Court of Justice on Community law. An example of overruling is that R v Howe overruled DPP v Lynch, on the fact that duress is now not a defence to murder.
Briefly discuss advantages and disadvantages of judicial precedent. [10 marks + 2 marks for AO3]

Potential Content

(A) Brief discussion of advantages of precedent could include:
- flexibility - dealing with new situations as they arise, or updating out-of-date rules as in R v R and/or Herrington
- dealing with real, as opposed to theoretical, cases
- providing detailed rules for later cases
- just, as judges are impartial and basing their decisions on legal rules
- authoritative – especially in decisions of Supreme Court and Court of Appeal due to the numbers and experience of judges in court
- certainty
- time saving.

(B) Brief discussion of disadvantages of precedent could include:
- the undemocratic nature of law making, as judges’ role can be said to be applying law passed by Parliament rather than making law
- in order to make precedent there is need for case to come to court, especially the higher courts which may be a lottery based on the lawyer’s advice and funding
- in some cases each judge may give a different reason for their decision which may result in the difficulty for later judges/lawyers identifying ratio
- the number of precedents made and the difficulty of finding an authoritative law report
- rigidity – bad decisions difficult to change
- uncertainty
- retrospective nature of decision.

Note: for Sound (A or B) at least two of the above points should be briefly discussed, supported by example(s).
Student answer for consideration

Advantages of Judicial Precedent could include flexibility and detailed practical rules.

First, flexibility is that judges can avoid previous precedent as time and society progresses. It allows the law to develop on as Society's views do. For example, in R v R it was stated that a man could no longer rape his wife as both the law and society felt allowing this was unjust.

Second advantage is detailed practical rules. The Legislation made by Parliament is kept vague on purpose, this allows judges to interpret the law and apply it accordingly. This is an advantage as future cases then have practical rules of the legislation to apply to cases.

On the other hand, disadvantages of Judicial Precedent could include uncertainty and it being unconstitutional.

Firstly, one disadvantage is uncertainty. Judges are able to avoid precedent. For example, by overruling or distinguishing, it makes precedent uncertain. This is a disadvantage as Lawyers can't be certain in advising their clients. In Balfour v Balfour, the married couple were denied being able to make a contract. Lawyers followed this, but it was changed in Merrit v Merrit to allow separated couples to make a contract.

Finally, unconstitutional is a disadvantage of Judicial Precedent as judges aren't democratically elected and they may not represent society's views. They may change precedent against the majority of the public views.
Section A: Commentaries

Topic: Parliamentary Law Making

Comment on answer to Question 01

The outline of the law-making process in the House of Lords was generally accurate, though there was some confusion at times with the process in the House of Commons, for example, saying that “At the committee stage, there will be 16-80 MPs with particular interests in the Bill or they have a specialism in that area”. This procedure only applies in the House of Commons Committee stage.

The outline of the doctrine of Parliamentary supremacy was covered with a generally accurate account of Dicey’s theory. There is a fair amount of coverage of limitations on supremacy but this could not be credited as the question was purely asking for an outline of the doctrine. Limitations are only required if the question specifically asks about them. Credit will not be given for material that is not relevant to the question.

This response was awarded 9 marks – clear A and sound B.

Comment on answer to Question 02

All three points in the potential content were covered, giving a clear overview of pressure groups as an influence. Several examples of pressure groups and campaigns were clearly recognised and understood. The answer could have been improved with reference to the influence of pressure groups on Parliament (as opposed to government) and any result of such influence – in other words how successful the campaign was (or not).

This response was awarded 9 marks – sound A.

Comment on answer to Question 03

Three points were briefly discussed for both advantages and for disadvantages. For advantages, there could have been greater emphasis on the need to influence Parliament (as law makers) rather than government. However, the points made – that pressure groups raise public awareness of an issue, that they can have wide-ranging influence, and their size, supported by some evidence – outweighed any shortcomings. For disadvantages, two points were briefly discussed, again supported by some evidence; there was also some support from a third point to bring this part of the answer into the sound category as well.

This response was awarded 10 marks + 2 AO3 – sound A and sound B.
Topic: Delegated Legislation

Comment on answer to Question 04

Both the use of statutory instruments and orders in council were briefly described and were supported by good use of examples, particularly the example about hedgerows which linked the statutory instrument (the piece of delegated legislation) to the enabling Act (the primary legislation).

This response was awarded 10 marks – sound A.

Comment on answer to Question 05

The description dealt with three of the points mentioned in the potential content. All the case examples were well explained in the answer. The procedure was not quite as well described but the good use of the case examples compensated for this.

This response was awarded 10 marks – sound A.

Comment on answer to Question 06

Three valid points were discussed and each point was supported by an accurate example: this clearly brings the answer into the ‘sound’ category.

This response was awarded 10 marks + 2 AO3 - sound A and sound B.
Topic: Statutory Interpretation

Comment on answer to Question 07

For internal aids, three possible aids were outlined but the “Theft Act” is the only example given. For external aids, two were identified but were not supported by examples.

This response was awarded 7 marks – clear A and some B.

Comment on answer to Question 08

This answer briefly explained the literal rule and was well supported by a well-explained case example, which, because of the linking of the case facts to the rule, was felt just sufficient to achieve ‘sound’.

This response was awarded 8 marks - sound A.

Comment on answer to Question 09

For advantages of the literal rule, two valid points were made; the first about supremacy was particularly well made. It could have improved the flow of the answer even further if all points for advantages were made together and some evidence was given to support the point.

For disadvantages, very good use was made of the Berriman case to illustrate the point about the absurdity and unfairness of the result.

This response was awarded 10 marks + 2 AO3 – sound A and sound B.
Topic: Judicial Precedent

Comment on answer to Question 10

All three elements of obiter dicta were outlined and this was supported by some use of relevant case examples. This outline demonstrated reasonably good understanding of what obiter is and its relevance to judicial precedent.

Three points about law reports were identified but their use in the context of precedent was not clearly described.

This response was awarded 7 marks - clear A and some B.

Comment on answer to Question 11

The use of the 1966 Practice Statement was well described and was illustrated well by using the case of Herrington.

The answer then explained what distinguishing is, and used cases from the Court of Appeal to illustrate it. This question specifically referred to the powers of judges in the Supreme Court. Therefore, the example given does not support the point made. Having said this, the idea of superior level judges being able to distinguish came through and this part of the answer received credit.

The example of overruling is also correct.

This response was awarded 9 marks – sound A.

Comment on answer to Question 12

For advantages, the first point was valid, though the case example of R v R could have been developed to show how precedent can be flexible. Detailed practical rules made in the course of a precedent are an advantage, though it was not accurately explained as the rules are set out in law reports, not legislation.

For disadvantages, two points were made, uncertainty and the unconstitutional nature of precedent, though only the first point used a case example. However, this example was not accurately explained.

This response was awarded 6 marks + 1 AO3 – clear A and some B.
Section B: The Legal System

Topic: The Civil Courts and other forms of dispute resolution

1 3

Civil cases can be dealt with by the courts or by means of alternative methods of dispute resolution. Briefly explain any two of the following alternative methods:

- negotiation
- mediation
- conciliation.

[10 marks]

Potential Content

(A) Brief explanation of first form of dispute resolution
(B) Brief explanation of second form of dispute resolution

Negotiation

- who carries out the negotiation – the parties, their lawyers or unqualified representatives
- possible forms of negotiation – face to face, using telephone, email or conference calls
- types of dispute that can be dealt with
- process – continued talking/contact until resolution made or fails
- successful outcome is agreement which is enforceable if the parties formally agree.

Mediation

- process can arise through agreement or requirement, as with family disputes
- mediator will be qualified in mediation and possibly area of dispute
- commercial or family disputes can be settled using this method
- process is the mediator passing messages between parties until they reach agreement between themselves
- successful outcome is agreement which is enforceable if the parties formally agree.

Conciliation

- qualified conciliator conducts the resolution process
- process is the conciliator passing messages between parties and advising parties on their respective positions
- type of cases dealt with - likely to be employment or commercial cases
- successful outcome is agreement which is enforceable if the parties formally agree.

Note: for Sound (A or B) at least three bullet points briefly explained.
Student answer for consideration

Negotiation is where the parties, or their legal representative, solve a dispute by talking to each other and come to a mutually acceptable agreement. The process of negotiation is different depending on the parties. It can be done face to face, over the phone, by email. The decision made by the parties in negotiation is not legally binding although it can be made binding through signed documentation. There is also no legal guidance available as parties are encouraged to solve the dispute between themselves. Negotiation is often used to solve disputes between neighbours over issues such as sound or pollution (bonfires), or between landlords and tenants, and is used in all disputes before it reaches the civil court. The decision is made by the parties by themselves and they agree on the specific details of the agreement.

Secondly mediation is where a mutually independent 3rd party passively assists the parties to come to a solution to their dispute. The process of mediation involves the mediator organising a time and date for the dispute to be resolved that suits both parties. Their role is to find a common ground between the parties and help them to explore points made by them. The decision is ultimately made by the two parties on their own and is not legally binding but can be made binding through signed documentation. There is no legal guidance available although parties can have lawyers but they must pay for them and the mediator usually charges for their service. Types of disputes settled by mediation are disputes within companies and business as it is a private process. The Family Law Act 1996 encourages divorcing or separating couples to settle disputes through mediation instead of going to the civil courts. They will discuss disputes about children, property and finance.
Describe dispute resolution by tribunals.

Potential Content

(A) Description of dispute resolution by tribunals could include:
- composition of panel
- how tribunals can come about – statutory or disciplinary, and examples of cases heard
- tier structure
- more formal nature of hearings where evidence may be given on oath and use of lawyers/representatives
- outcome will be a legally enforceable award
- there may be a right to an appeal based on legal reasons.

Note: for Sound (A) at least three bullet points described
Student answer for consideration

Tribunals can be either domestic or administrative. Domestic tribunals are internal tribunals which include the Bar Council, Football Association or tribunals dealing with disputes between members. While administrative tribunals are between the state and an individual such as mental health tribunals and immigration tribunals which decide whether a person may gain entry to the country or can be removed. Tribunals were set up to relieve pressure on the courts and as a result are free and less formal.

The people involved are the two disputing parties and the tribunal board which consists of a chairperson with legal training and two wing-persons who will represent both views of the dispute. The wing-persons will also be experts in the field under dispute. The process begins with parties been summoned with their witnesses. Legal advisers are discouraged. Both parties will put forward their argument and evidence. Witnesses can be cross examined. The tribunal will produce a judgement which legally binding to both parties. Each party must meet their own costs. The appeal route is limited.
Briefly discuss advantages and disadvantages of dispute resolution by tribunals.

[10 marks + 2 marks AO3]

Potential Content

(A) Brief discussion of advantages of tribunals could include:
- expertise of panel – a qualified lawyer or judge in charge of proceedings/specialist knowledge of panel
- that legal reasons for decisions are given and recorded
- lower cost compared with courts, perhaps because of greater informality of proceedings and lesser need for legal representation as compared to courts
- speed compared to courts/taking pressure off courts
- that they provide a possible public forum for airing a dispute, as compared with negotiation, mediation or conciliation.

(B) Brief discussion of disadvantages of tribunals could include:
- possible influence of Chair over the other panel members
- the cost of tribunal hearing due to initial fee and the need to pay for lawyers and the lack of public/state funding; this may lead to an imbalance between parties, where one party can afford a lawyer and the other cannot
- hearings are formal compared with other methods of ADR
- appeals only available against legal reasons for decisions; high costs of taking an appeal as lawyers likely to be required
- hearings and appeals may be reported, which may lead to adverse publicity.

Note: for Sound (A or B), at least two of the above points should be briefly discussed.
**Student answer for consideration**

An advantage to tribunals is that they involve the use of two lay people specialised within the particular areas of concern. They can provide sufficient and accurate knowledge into the dispute resulting in a fair and just decision.

Tribunals are still more informal than court and tend to be quicker as well. As the final decision is legally binding, the winning party can be confident of the outcome and the losing party not having to pay any costs.

However tribunals are not voluntary and there can be an imbalance between the parties. If the dispute is between an individual and a large company such as Sainsburys, the dispute would be unfair as Sainsburys would have a specialised trained department to help with these particular situations as they would want to uphold their reputation. The individual may have insufficient funds to afford a representative or even to represent themselves, in which case they will have an increased chance of losing the dispute.
An either-way offence, such as Actual Bodily Harm (ABH), can be tried either in the Magistrates Court or in the Crown Court. Describe the role of lay magistrates when dealing with an either-way offence.

1 6

**Potential Content**

(A) Description of role of lay magistrates in either-way cases:

- pre-trial – plea before venue process, power to commit (send) for trial to the Crown Court, pre-trial review if offence to be tried summarily, sentence or commit for sentence following guilty plea, bail or custody if case is adjourned for any reason, decision on funding
- trial as summary offence – hearing evidence as bench of three, deciding guilt/innocence as unanimous/majority decision
- post-trial – deciding sentence with reference to maximum sentencing powers; committing case to Crown Court for sentence if their powers are insufficient.

Note: for Sound (A) – all three points to be described.

**Enhancement**

Appeal role
Student answer for consideration

When dealing with an either-way offence the lay magistrate must take into account whether the defendant has offended before, the seriousness of the crime and whether their sentencing powers would be adequate enough for the seriousness of the offence. They would then allocate it to the Crown Court or Magistrates Court after taking these factors into consideration. If it stays at the Magistrates Court, the magistrate’s role is to try the defendant for that offence and come to a verdict. Once the verdict has been established the legal advisor advises them on sentencing (but not tell them what it should be) and it’s up to the magistrates to then come up with their own sentence that they feel best suits the offence the defendant has committed.
1.7 Describe how jurors qualify and are selected for service in a Crown Court trial.

[10 marks]

Potential Content

(A) Description of jury qualification and selection:
- qualification – age limits, being on electoral register, residence
- reasons for not qualifying – disqualification, deferral, excusal or other good reason for not serving
- selection – initial selection by JCSB, in jury waiting room and in court, challenges, swearing in.

Note: for Sound (A) all three points have to be described.

Enhancement:
Vetting
Student answer for consideration

Jurors qualify by being a person between the ages of 18 and 70, being on the voting register and by living in the UK for 5 consecutive years following their 13th birthday. However, they can be disqualified from jury duty if they have received any custodial sentence for life or public protection or have been given a suspended sentence, or lesser sentence in the last 12 months. Jurors are selected at random from the register and are given a letter informing them when they have been invited for jury service. Jury service can be postponed if the person is due to go into labour or has an infant, is in the armed forces or if they have a prepaid holiday or business meeting that can't be rescheduled. If the person suffers from any mental or physical disability such as paranoia or deafness then they will not qualify. Upon arrival at the court the jurors are randomly selected for cases and must swear an oath and then can participate as long as they don't know any of the parties involved in the case.
1 8 Discuss one of the following:
- advantages of using lay magistrates in the criminal justice system
- advantages of using jurors in the criminal justice system.

[10 marks + 2 marks for AO3]

Potential Content

Either
(A) Discussion of advantages of lay magistrates could include:
- public confidence in trial by peers, long established, reduction of professional involvement
- fairness of open trial/justice
- limited number of appeals
- cost compared to judge-only trials
- representative eg gender, ethnicity.

or
(A) Discussion of advantages of jurors could include:
- long established approach of trial by peers, public confidence in system, reduction of professional involvement
- fairness of open trial/justice
- jury equity
- elimination of bias.

Note: for Sound (A) at least three of the above points should be discussed, supported, where appropriate, by examples.
Student answer for consideration

An advantage of using jurors in the criminal courts is that the defendant (D) is judged by a randomly selected group of their peers meaning that they are most likely to get judged by an unprejudiced group who merely decided the verdict upon the case facts, with guidance of points of law from the judge.

An advantage of having jurors is that as shown in Bushell's case that they must be the sole decision maker meaning that the judge, who are often viewed to be male upper class Caucasians, can't involve himself in the decision so his prejudices can't influence the jury.

Another advantage is shown in R v Owens where the jury ignored the law about the offence but judged it from a moral standpoint instead. In the case of Owens a man who was blind in one eye was driving a heavy lorry which was unroadworthy and uninsured crashed into Mr Owens son and killed him. However the driver was only given a short prison sentence for reckless driving and so on release Mr Owens attacked the man in revenge. The jury decided that Mr Owens was not guilty but not due to any points of law.

As England is a diverse multicultural country it is important for juries to be selected at random in order to bring a range of views, beliefs and cultures. Also an advantage of having a jury is that many offences have objective tests which are judged against the "reasonable person" and so it can be judged against a selection of people from the public which is surely the best way to judge the "reasonable person."
Topic: The Legal Profession and other sources of advice, and funding

Describe how a person is trained and qualifies to become a barrister.

Potential Content

(A) Description of training and qualifying process:
- academic training – degree entry, CPE/GDL for non-law degree, BVC/BPTC
- qualifying – enrolling with Bar Council and Inns of Court, residential training weekends (alternative to dining), pupillage, call to Bar.

Enhancement
Finding place in chambers.

Note: for Sound (A) both bullet points to be described.
**Student answer for consideration**

To become a Barrister, the student, must complete a degree. If a law degree is taken the student will learn all elements of Law and practice, and the legal system. If they have completed another subject degree, they can take a one year GDL which will convert their degree into a Law degree.

Once the student has completed this they must join a inn of Court, for example, Grays Inn and ‘dine’ there 12 times. Next, a Bar professional training course must be taken, this introduces advocacy. If the student wants to go into criminal law, the criminal law module is compulsory.

Next, the student must complete a pupillage. In 2008/2009 only 15% of law graduates found a pupillage. A pupillage is done in chambers. The first 6 months is done by shadowing a Barrister. The second 6 months, they are on their own, taking on cases. Once they have successfully completed this, they will be called to the Bar. They can now use the title Barrister but can only practise once they have tenancy in chambers.

The Barrister is now qualified. They must complete 12 hours of continual professional development a year, and can apply to be a QC after 10 years in practise.
2.0 Briefly explain where a person, injured in an accident, could obtain legal advice and representation in order to sue for damages, and outline how this could be paid for. [10 marks]

Potential Content

(A) Brief explanation of possible sources of advice and representation:
- Legal sources – solicitor, Community Legal Service, law centres
- Non-legal sources, such as CAB, claims company, internet, trade union, insurance company, motoring organisation.

(B) Outline of how claim could be paid for (or financed) could include:
- Legal Help and/or Legal Aid (Representation) in certain very limited cases
- private funding
- ‘no win no fee’ conditional fees
- via insurance policy or union membership
- pro bono.

Note: for Sound (A) both bullet points to be briefly explained. For Sound (B) at least two bullet points to be outlined.
Student answer for consideration

In order to sue for damages, the claimant would be looking at a civil case. They could obtain legal advice from a CFA, Trade Union, Law centres or privately.

Firstly, the CFA is a conditional fee agreement with the slogan ‘Now win, No fee.’ The claimant would therefore not pay their solicitors fees if they win the case. Unfortunately if they lose, they pay their solicitors fees and the other sides fees. The solicitor on the case would advise for after the event insurance to be taken out; a premium is paid, and if the claimant loses the insurance will pay not themselves. This is a way of funding advice.

The second way of obtaining advice is through a trade union if the accident happened in the work place. The union representative would give advice on what to do.

The third way of obtaining advice and representation is through Law centres. They are across the UK and are run by pro bono solicitors/Barristers. They are a lottery funded charity and will not charge for the advice and representation.

Finally, the claimant could get representation and advice from a Solicitor/Barrister. The claimant could get a specialist in litigation and will do all the representation. Unfortunately private funding is very expensive as a solicitor could charge up to £600 per hour.

The claimant couldn’t get representation from the Community Legal Services as they do not deal with personal injury cases.
2.1 Briefly discuss advantages and disadvantages of the methods of obtaining funding for advice and representation in civil cases.  

[10 marks + 2 marks for AO3]

### Potential Content

(A) Brief discussion of advantages could include:
- for those of very limited means or who are suffering from a disability: legal help provides source of advice; legal representation provides sources of funding of court action
- ‘no win no fee’ allows claims from those who could not afford court action or would not qualify for legal aid
- funding provided by insurance or union benefiting members
- private funding allowing choice of representative.

(B) Brief discussion of disadvantages could include:
- general expense, particularly of court action
- limited availability of state funding, cost of insurance policies required for ‘no win no fee’ cases, threshold test for ‘no win no fee’ cases
- insurance or union funding only available to members and provided certain conditions are satisfied
- limited availability of law centres and CAB.

Note: for Sound (A or B) at least two of the above points should be briefly discussed.
Student answer for consideration

One advantage for obtaining funding for legal advice is a Law centres all advice is free. You will be gaining specialist advice from Solicitors and Barristers and will not pay as its pro bono.

One disadvantage of Law Centres funding advice is that there are only 55 centres in the UK, the availability of Law and therefore people may not be able to access it. In addition, one advantage of the CLS (community legal services) is that they can pay for full representation by a state lawyer.

On the other hand, one disadvantage of the CLS is that they have a Strict Means and interest of Justice test in which you can qualify, for Around ¾ of people don’t qualify for the means test, this is an advantage as people therefore don’t get access to justice.

In addition, the CAB (citizens advice bureau) are another good source of advice and are free. They are an independent charity and there are 3500 centres in the UK. This means the CAB is easily accessible for advice.

Unfortunately, a disadvantage of the CAB is that they may refer your case to legal specialists if the case is complicated and this will need some form of payment. This may mean there is no continuity for the person wanting the advice.
Section B: Commentaries

Topic: The Civil Courts and other forms of dispute resolution

Comment on answer to Question 13

Both negotiation and mediation were covered in this answer. Both were well explained and there was good use made of supporting examples of their use.

This response was awarded 10 marks – sound A and B.

Comment on answer to Question 14

At least three descriptive points describing dispute resolution by tribunals were covered briefly but accurately.

This response was awarded 9 marks – sound A.

Comment on answer to Question 15

For advantages, at least three points were briefly made; to improve the answer overall, they would have benefitted from slightly more depth of discussion.

For disadvantages, a single point was made, though this time, in some depth. For improvement, the mark scheme requires at least two points to be briefly discussed, so this answer could not be awarded the highest level of ‘sound’.

This response was awarded 8 marks + 2 AO3 - clear A clear B.
Topic: The Criminal Courts and lay people

Comment on answer to Question 16

All three points indicated in the mark scheme were identified but the answer was very general and contained limited use of legal terms.

This response was awarded 6 marks – clear A.

Comment on answer to Question 17

All three points in the mark scheme were covered. The answer could have been improved further by including slightly greater detail on how juries are selected.

This response was awarded 8 marks – sound A.

Comment on answer to Question 18

The point that the jury represents the reasonable person was an excellent comment showing really good understanding of the role of juries. A point such as this can be credited even though it is not mentioned on the mark scheme. The mark scheme, for this and for all answers, is indicative content, not exclusive. There was also detailed coverage of the Owen case example.

This response was awarded 8 marks + 2 AO3 = 10.
Comment on answer to Question 19

Both training and qualification of barristers were accurately described. The answer could have been improved further by greater detail of what a trainee barrister does during pupillage.

This response was awarded 8 marks – sound A.

Comment on answer to Question 20

This question required coverage of where legal advice can be obtained and how legal representation could be paid for. Both legal and non-legal sources of advice were briefly explained; in fact, more than one source of each form of advice was covered. At least two forms of funding were identified, though this part of the answer could have been improved further by including greater detail about how the ways of funding a case work.

This response was awarded 9 marks – sound A and clear B.

Comment on answer to Question 21

Three points were made for each of advantages and disadvantages, though there was no separation of points between advice and funding. Credit was given for the material that considered access to advice, where it was linked to funding.

This response was awarded 8 marks + 2 AO3 – clear A and B.