SAMPLE ANSWER

M/J 2012 paper 2
Question 2

Sachin, aged 70, decides to make a will. He is concerned that if he dies without making a will his property will be inherited by members of his family whom he does not wish to benefit from his estate. His wife died some years ago but he has three children. He wants his eldest son Tom and his daughter Stella to receive everything. He does not want his second son Yuri to receive anything because they have recently argued and Sachin does not agree with Yuri's political views. Yuri is in his second year at University and currently receives financial support from his father. Sachin writes everything down on a piece of paper, leaving all his property to Tom and Stella in equal shares. He signs the piece of paper and puts it in a drawer.

(a) Consider whether this piece of paper is a valid will. [10]

In considering whether Sachin made a valid will when he wrote his intention down in a paper to benefit his eldest son and daughter in equal shares, it must be proven by the executor or administrator of Sachin estate that the Will complied with the requirements in s. 9 of the Wills Act 1837. Firstly the will must be in writing. This is clearly complied with since we are told that Sachin in fact wrote his intention in a paper.

On top of that Sachin must also have signed the will. Although we are not told as to whether he signed the paper, provided he signed it, this requirement is also satisfied. However, there is a fundamental need for two witnesses to witness or acknowledge Sachin's signature. On the facts, we are merely told that he wrote down his intent in a piece of paper, signed it but did not get two witnesses to witness his signature. He merely placed the Will in the drawer thus making it an invalid will.

Therefore it is safe to conclude that the will made by Sachin is not valid.

Sachin makes a second will on the same terms as previously but which includes a gift of £2000 to Freda, who is married to his neighbour Dan. Freda was very kind to Sachin after his wife died and Sachin wants to make some provision for Freda. Sachin asks Dan to sign the will as well as Eric, another neighbour.

SAMPLE ANSWER

(b) Consider whether this second will is valid. [10]

Sachin's second will seems more proper than his first will. It must always be borne in mind, that a second will automatically terminate the first will. But however the second Will must also comply with s. 9 of the Wills Act 1837. It can be safely assumed that Sachin wrote his intent down, not only to benefit his son and daughter this time but also to benefit his neighbour, thus complying with the requirement that the will must be in writing.

It can also be assumed that he signed the will and needless to say that he got two witnesses to witness his signature. Prima Facie it seems that it's a valid will.

But there seems to be a problem in his gift of £2000 to Freda. This is because we are told that Dan, who is Freda's husband, signed the will as a witness. According to s.15 of the Wills Act 1837, a gift to any witness to a will shall be void and any gift to the wife or husband of a witness shall also be void. Nevertheless, this does not affect the validity of the will. Thus, Freda may not be able to claim the £2000 as stated in the will but Sachin's eldest son and daughter will still have a valid claim from the will.

(c) Sachin later dies. If the court decides that Sachin has drawn up a valid will, what action can his second son Yuri take in order to claim part of his deceased father's estate? [10]

It must be firstly noted that Yuri is not a beneficiary under his father's will. But at the time when his father died Yuri was in his second year at University and received financial support from his father. The Inheritance (Provision for Family and Dependants) Act 1975 states that an application can be made by Yuri for reasonable financial provision from his father's estate for not receiving adequate financial provision. Nevertheless, it must be brought to Yuri's attention that the court will only award financial provision based on needs, financial resources, obligations of the applicant, the size and nature of the estate, the physical and mental state of the applicant and any other matter which in the circumstances the court believes to be relevant.

Therefore Yuri, who will still need his father's support financially till he completes his studies, may be given financial provision from his father's estate even though he does not benefit from his father's will. The reason why the court would be willing to benefit him at least to complete his studies is because Sachin was in fact providing for his education when he was alive and till the time he died. This is also in a way giving effect to Sachin's intention.

SAMPLE ANSWER

Source material
Wills Act 1837
s.9 No will shall be valid unless it is in writing, and signed by the testator (i.e. the person making the will), or by some other person in his presence and by his direction; and the signature is made or acknowledged by the testator in his presence of two or more witnesses present at the same time; and each witness either attests and signs the will; or acknowledges his signature, in the presence of the testator.

s.15 A gift to any witness to a will shall be void and any gift to the wife or husband of a witness shall also be void. This does not affect the validity of the will.
Inheritance (Provision for Family and Dependants) Act 1975
Under this Act applications can be made for reasonable financial provision by certain members of the deceased person's family where they believe they have not received adequate financial provision including: spouses, former spouses, children of the deceased, any person who was being maintained by the deceased. Adult children who are not being maintained by the deceased are unlikely to be successful under the Act. The court shall award financial provision based on needs, financial resources, obligations of the applicant, the size and nature of the estate, the physical and mental state of the applicant and any other matter which in the circumstances the court believes to be relevant.

SAMPLE ANSWER

'The system of precedent makes it difficult for unjust decisions to be overruled.'

How far would you agree with this criticism?

*In order to agree or disagree with the statement, it is crucial to understand the concept of precedent and its application on the hierarchy of the courts. The doctrine of binding precedent or **stare decisis** (treating like cases alike), lies at the heart of the English legal system. For example in **Donoghue v Stevenson [1932] AC 562,** the House of Lords held that a manufacturer owed a duty of care to the ultimate consumer of the product. This set a binding precedent in **Grant v Australian Knitting Mills [1936] AC 85.** Further in **Shaw v DPP [1962] AC 220** the House of Lords held that a crime of conspiracy to corrupt public morals existed. This was followed in **Knuller v DPP [1973] AC 435.***

In essence, the doctrine is based on two important maxims i.e. ratio decidendi & obiter dictum. Ratio decidendi is the reason for the decision and it is binding on later courts. Anything said obiter are statements made by the way and are merely persuasive because they are not strictly relevant to the matter in issue. This clearly shows that at times unjust decisions may be binding on future courts and thus resulting in injustice.

However, if the case goes on appeal either to the EUROPEAN COURT OF HUMAN RIGHTS (ECHR), the Privy Council (appeal from commonwealth countries) and the Supreme Court of the UK, there is some flexibility on strict application of precedent. The ECHR & the PC's decisions are not regarded as binding on future cases but of course they are highly persuasive.

*The more important court, the Supreme Court which stands at the summit of the English court structure, is the most important court in the UK. Its decisions are binding on all courts below it in the hierarchy on similar facts. The court was previously known as the House of Lords till 2009 and it was not bound by its own previous decisions until the case of **London Street Tramways v London County Council (1898)** where the court bound itself in the interests of certainty.*

*Although the move in **London Street Tramways v London County Council (1898)** promoted certainty but nevertheless being the highest court in the hierarchy, if they were not allowed to overrule their own previous decision, it may result in unjust binding decisions. This is obviously unfair.*

*So in 1966, **Lord Gardiner,** the Lord Chancellor propounded the **Practice Statement** which stated that only the House of Lords can depart from its own previous decision when it appeared right to do so. This discretion must be exercised sparingly.*

*There are examples of cases where the courts overruled their own previous decision to ensure that justice is served. **Murphy v Brentwood CC [1990]** overruled their own previous decision in **Anns v Merton LBC [1977]** for the very fact that the two stage test in Anns is not appropriate to establish duty of care replacing it with the three stage test i.e. foreseeability; proximity; & it must be fair, just and reasonable before the courts can impose duty of care in novel situations. Therefore it is iniquitous/unfair to agree with the above statement that the system of precedent makes it difficult for unjust decisions to be overruled.*

*Once again a later court overruled **Addie v Dumbreck** which was a 1929 decision where it was stated that an occupier will only be liable to a trespasser if he does an act to willfully cause injury to the trespasser. However, Lord Pearson, after a long time, in 1972 in the case of **Harrington v British Railway Board** stated that the standard imposed in **Addie v Dumbreck** was not acceptable and held that* *a duty should be owed to a trespasser provided the occupier had knowledge of their presence or ought to have reasonably known of their existence. The main reason for the overruling was to protect trespassers, who are normally children. This is where a heavier duty is placed on an adult knowing the existence of children in their vicinity and taking necessary precautions to avoid any injuries to them. In fact, the decision in* ***Harrington*** *was elevated to an Act of Parliament i.e.* ***Occupiers' Liability Act 1984*** *after the recommendation of the Law Commission.*

The above mentioned cases are not the only cases on overruling. There are many more cases where the Supreme Court overruled its previous decision when it appeared right to do so. This clearly shows that the system is not difficult to overrule an unjust previous decision.

But how many cases go up to the Supreme Court in a year? According to the Home Office statistics in 2011, the overall cases that went on appeal to the Supreme Court was 208, whilst 202 was disposed off. Compared to the Court of Appeal (Civil Division) the number of cases mentioned above are negligible. This is because, in the same year, the Court of Appeal (Civil Division) had 3758 appeals where 3709 was disposed off. For many years, ***Lord Denning*** *highlighted this lack of fairness in the system since most appeals stop at the Court of Appeal.*

There are few reasons for this. Firstly, leave of appeal to the Supreme Court is not readily granted even if the parties are in position to pay for the appeal. However the reason to obtain leave is to ensure that the Supreme Court's time is not wasted on claims where the law is pretty straight forward. Nevertheless, the second reason is mainly because the parties are not in a position to pay for appeals in the Supreme Court and thus the highest appeal court in practice in the UK is the Court of Appeal although in theory it is the Supreme Court.

At this juncture, it is arguable that the system of precedent makes it difficult for unjust decisions to be overruled. The ***Practice Statement 1966*** *does not apply to the Court of Appeal despite many attempts made especially by Lord Denning that it is extended to the Court of Appeal.*

However, even though the Court of Appeal is bound to follow its own previous decision but according to ***Young v Bristol Aeroplane Co Ltd (1944)****, the court can disregard a previous decision where firstly there are two conflicting decisions of the Court of Appeal, the court can decide which to follow and which to reject. It is at their discretion. In other words, the court can choose to disregard an unjust decision. Secondly, where a decision of its own has been impliedly overruled by the Supreme Court, then the Court of Appeal is bound to follow the Supreme Court's decision. Thirdly, where the previous decision was given per incuriam i.e. where the decision is wrong on point of law, then the court is not bound to follow that decision which is unjust. Finally in 2008, the Court of Appeal in the case of* ***Actavis UK Ltd v Merck & Co Inc****,* ***Lord Justice Ward*** *stated that there is a further discretion on the Court of Appeal to disregard a previous decision in cases involving patents. This is because patents rights are inconsistent and it must be decided on a case to case basis, especially to avoid injustice due to a binding precedent.*

Based on the above discussion, it appears that it is quite difficult to overrule an unjust decision in the Court of Appeal because of the system of precedent. However there are other methods that the courts have deployed in order to disregard a previous decision to ensure justice is served. These are the methods of avoiding precedent. The first method is distinguishing where the courts find differences in the material facts and thus disregard a precedent. The second is reversing, where for example if a case comes up from the High Court on appeal to the Court of Appeal, then the Court of Appeal can reverse that decision. Finally disapproving are used at times, which will not make much difference to the decision of that court but may result in Act of Parliament or overruling of that precedent by the Supreme Court, if at

SAMPLE ANSWER

all the case goes up to that court. This is where the inferior judges criticise a precedent in the hope that there will change to that unjust binding precedent.

As a conclusion, it could be safely said that even though the system of precedent makes it difficult for unjust decisions to be overruled but then the advantages of precedent, for example maintaining certainty in the law, saving time and cost because of certainty and developing the common law in an incremental manner without having the need for Parliamentary law, outweighs the disadvantages mentioned above and therefore resulting in the system to be fully entrenched in our legal system.

2 (a) Margaret has been a licensed taxi driver for 20 years. Her arthritis has become painful but she has not told anyone about this. Margaret also struggles to get in and out of her taxi.

SAMPLE ANSWER

Margaret picks up Jennifer and takes her to the airport using a much longer route than necessary in order to increase the cost of the journey. Explain whether Margaret has broken the law. [10]

- Hackney carriage driver's standard of service
- By law (15)

(b) Damian has just got his taxi driver's licence. He puts his badge in his coat pocket to keep it safe and sets out to look for customers. He picks up Khalid who wants to go to a destination in the east of the city. As they set off Damian decides he does not want to go that far so he tells Khalid to get out and leaves him at a busy junction. Explain whether Damian has broken the law. [10]

- Section 53
- Bylaw (10,13,14)

(c) Ivan is a licensed taxi driver. He parks a short distance away from other taxis at the railway station, goes inside and shouts, "Taxi for hire!" Samantha has several suitcases and gets into Ivan's taxi. At her destination Samantha asks Ivan to help with her luggage. Ivan refuses and watches Samantha struggle with her suitcases. Explain whether Ivan has broken the law. [10]

- Hackney carriage driver's standard of service
- Section 62
- Bylaw (8,11b,13)

(d) Describe the different types of delegated legislation. Critically assess the advantages and disadvantages of delegated legislation. [20]

Source Material for Question 2

Town Police Clauses Act 1847

<u>Section 53</u>

A driver of a hackney carriage who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance shall be liable to a penalty.

<u>Section 62</u>

If the driver of any hackney carriage leaves it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, such driver shall be liable to a penalty.

(A hackney carriage is a licensed taxi)

Local Government (Miscellaneous Provisions) Act 1976

SAMPLE ANSWER

<u>Section 69</u>

(1) No person being the driver of a hackney carriage or of a private hire vehicle licensed by a district council shall without reasonable cause unnecessarily prolong, in distance or in time, the journey for which the hackney carriage or private vehicle has been hired.

(2) If any person contravenes the provisions of this section, he shall be guilty of an offence.

Bye-laws

(8) The soliciting of passengers by the driver, or any person acting on their behalf, is not permitted.

…

(10) All licence holders are issued with a badge which should be worn at all times.

(11) A driver should, when requested by the hirer:-

…

(b) Afford reasonable assistance in loading and unloading luggage

…

(13) When plying for hire, with the vehicle, the driver must proceed to a hackney carriage rank that is not fully occupied.

(14) The driver must behave in a civil and orderly manner and take all reasonable precautions to ensure the safety of passengers entering or leaving the vehicle.

(15) When hired the driver should complete the journey by the shortest route possible unless directed otherwise by the hirer.

Hackney carriage driver's standard of service

If the driver hereby licensed contracts or develops a serious illness or condition during the period of their licence, they shall forthwith notify the Licensing Section.

Examples of serious illness are:

- Arthritis (chronic) and other joint problems
- Depression and other mental health problems
- Fainting

ON 2010 Q3

SAMPLE ANSWER

Analyse critically the main ways in which delegated legislation comes into force in England and Wales.

TIPS & GUIDELINE

- **write ot the 3 delegated legislation**
- **analyse (how each of the 3 is made, and the example for each)**
- **explain the other issue relating to delegated legislation**
- **advantage**
- **disadvantage**
- **control of delegated legislation**
- **give statistic % (if can)**

In order to answer the question asked, it is crucial to understand the meaning of delegated legislation. Delegated legislation is a secondary legislation i.e. it is made by a person or body other than Parliament. Parliament, through an Act of Parliament, can permit another person or body to make law. By Parliament giving authority for legislation to be delegated, it enables other persons or bodies to provide more detail to an Act of Parliament. The legislation created must be made in accordance with the purposes laid down in the Act.

Even Though delegated legislation is derived from an Act of Parliament but in statistical terms, it is arguable that at present, delegated legislation is actually more significant than primary Acts of Parliament. The output of delegated legislation in any year greatly exceeds the output of Acts of Parliament and, each year, there are over 3,000 sets of rules and regulations made in the form of delegated legislation, compared to fewer than 100 public Acts of Parliament. The House of Commons information office statistics released in August 2011 showed the number of statutory instruments only that became law in 2010 was 3,866.

There are three main types of delegated legislation which can take the form of Orders in Council, which permit the government to make law through the Privy Council. Most delegated legislation, however, takes the form of Statutory Instruments, through which government ministers exercise the powers given to them by general enabling legislation to make the particular rules which are to

SAMPLE ANSWER

apply to any given situation within its domain. Finally delegated legislation can take the form of by-law, through which local authorities and public bodies are able to make legally binding rules within their area of competence or authority.

Most importantly delegated legislation allows the Government to amend a law without having to wait for a new Act of Parliament to be passed. As mentioned above, it enables other persons or bodies to present details to an Act of Parliament whereby the Act does not contain details of the provision due to lack of technical knowledge or Parliamentary time. Further, delegated legislation can be used to make technical changes to the law, such as altering sanctions under a given statute. Also, by way of an example, a Local Authority has power given to them under certain statutes to allow them to make delegated legislation and to make law which suits their area since that Local Authority will have the technical knowledge of what is best for the locality rather than Parliament. Delegated legislation presents a very important role since Parliamentary time taken to make law may not suit in an emergency situation, for example when there is an emergency need to declare whether a strike is legal or illegal. Finally, delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making.

Nonetheless, despite its advantages, delegated legislation is not without its criticisms. Firstly, it has been suggested that creation of delegated legislation lacks democracy as too much delegated legislation is made by unelected people. This is in fact the greatest criticism since the purpose of the elected body is to make law for the people. Will those who are unelected make laws for the benefit of people generally?

Secondly, there are too many delegated legislation that the public might find difficulty in coping with the changes or new law. Delegated legislation also lacks publicity, thus people may not even be aware there was a law made. One reason for the lack of publicity surrounding delegated legislation is because of the volume of delegated legislation made and this results in the public not being informed of the changes to law. But on the other hand, Act of Parliament are always published.

Thirdly, delegated legislation is subject to less Parliamentary scrutiny than primary legislation. Parliament therefore has a lack of control over delegated

SAMPLE ANSWER

legislation and this can lead to inconsistencies in laws. In addition, delegated legislation therefore has the potential to be used in ways which Parliament had not anticipated when it conferred the power through the Act of Parliament.

These difficulties and potential shortcomings in the use of delegated legislation are, at least to a degree, mitigated by the fact that specific controls exist in relation to it. These controls are twofold: parliamentary and judicial.

Despite its lack of time, Parliament exercises control over delegated legislation in that when the Act of Parliament is created, Parliament stipulates in the Act of Parliament itself the parameters with regard to delegated legislation. The majority of Acts simply require that regulations

made under their auspices be placed before Parliament so that it is checked. However this delegated legislation will automatically become law after a period of 40 days, unless a resolution to annul them is passed. Therefore it seems that this method of scrutiny is not very effective.

In 1973, there was a Joint Select Committee on statutory instruments, whose function is to consider statutory instruments. Then again, this committee merely scrutinises statutory instruments from a technical point of view as regards drafting, and therefore has no power as regards any question of policy in the regulation. Thus, this form of control also seems ineffective.

Finally judicial control of delegated legislation can be done when a delegated legislation is challenged, through the procedure of judicial review, on the basis that the person or body to whom Parliament has delegated its authority has acted in a way that exceeds the limited powers delegated to them. The court will then have the power to declare the delegated legislation as ultra vires and consequently void. On top of that the Human Rights Act 1998 fundamentally alters the courts' power over delegated legislation where that delegated legislation may be declared ineffective by the courts where it is found not to comply with the provisions of the HRA 1998, so ministers must be extremely careful to ensure that any delegated legislation is in fact compatible with the European Convention of Human Rights. However, this control is only effective if someone brings the issue up for judicial review or otherwise this may not be an effective control.

SAMPLE ANSWER

As a concluding point, I would suggest a reform especially with regards to the control of delegated legislation since delegated legislations are important and to do away would be a drastic move and result in drastic consequences. Therefore the reform should be setting up a new Select Committee whose main function would be scrutinise the details of each and every form of delegated legislation and to highlight especially to Parliament if there are any discrepancy or irregularity and Parliament would have the authority then to either approve this delegated legislation or to disapprove it. This new Select Committee should be an independent body. Although this process may incur cost but however the result of setting this committee up would definitely be useful and there will be less problems with delegated legislation. This committee must be in every state and they should also be responsible for publishing all approved delegated legislation so that the public are aware of them.