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Chapter 1

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Type: multiple choice question

Title: Chapter 01 - Question 01

01) Which one of the following is not considered by philosophers to be a definition of law?

a. Law is a system of rules laid down by a body or person with the power and authority to make law.

Feedback: Incorrect. Some philosophers look at the law as a system and emphasise the importance of having some person(s) or bodies with the power to make law – they say we can distinguish law from other social rules by looking to see if some such authority has made these rules according to other special law-making rules.

Reference: 1.2

***b.** Law is what legislators, judges and lawyers think the rules should be.

Feedback: Correct. This is not an accepted definition of law. Personal opinions on what the law ought to be in a given area may be important to promote legislative change, but they are not evidence of what the law is.

Reference: 1.2

c. Law is a tool for oppression used by the ruling class to advance its own interests.

Feedback: Incorrect. Many theories stress that law is not neutral and separate from economic or political forces in society. Some are of the opinion that law is a way in which one group's interests are advanced at the expense of those of another group; there are contrary views on this, however, and other theorists emphasise that law is a product of social consensus rather than (class) conflict.

Reference: 1.2

d. Law is a system of rules grounded in fundamental principles of morality.

Feedback: Incorrect. Many philosophers accept that law (or at least some part of the law) is ultimately based on a moral code, although they may argue about the importance of keeping law and morality conceptually apart.

Reference: 1.2

Type: multiple choice question

Title: Chapter 01 - Question 02

02) Which of the following is not an institutional source of English law?

a. Parliament.

Feedback: Incorrect. Parliament is the principal law-making body in England and Wales.

Reference: 1.5

b. The English courts.

Feedback: Incorrect. The English courts apply and develop the common law and so may be described as an institutional source of law.

Reference: 1.5

c. The European Community.

Feedback: Incorrect. The European Community makes law that is applicable and binding in the UK, and therefore may be described as an institutional source of law. In Chapter 10, we will look more specifically at which EC institutions have law-making powers.

Reference: 1.5

***d.** The police.

Feedback: Correct. The police may enforce the law, but they are not a source of law in themselves, even though the interpretation that the police place on the law may have far-reaching consequences for the public.

Reference: 1.5

Type: multiple response question

Title: Chapter 01 - Question 03

03) Which of the following are other terms used to describe a statute (select all that apply)?

***a.** Act of Parliament.

Feedback: Correct. This is the formal name given to a statute.

Reference: 1.6.2

***b.** Primary legislation.

Feedback: Correct. This is the classification of the level of a statute.

Reference: 1.6.1

c. Delegated legislation.

Feedback: Incorrect. This is the level of legislation below a statute.

Reference: 1.6.3

d. Order in Council.

Feedback: Incorrect. This is a form of law but is not a statutory source of law.

Reference: 1.6.3

Type: multiple choice question

Title: Chapter 01 - Question 04

04) Acts of Parliament are considered to be the supreme form of English law because..?

***a.** Parliament is sovereign and therefore statute law enacted by Parliament is considered to be supreme.

Feedback: Correct. This reflects the doctrine of Parliamentary supremacy in the UK.

Reference: 1.6.2

b. The European Community has designated Acts of Parliament to be supreme.

Feedback: Incorrect. The European Community does not involve itself with domestic legislation, although it does require some forms of EC law to be implemented by means of national legislation.

Reference: 1.6.2

c. The common law world respects the UK legal tradition.

Feedback: Incorrect. Some Commonwealth countries respect and broadly follow the UK legal tradition, but this does not affect the status of Acts of Parliament within the UK.

Reference: 1.6.2

d. The Queen has decreed that Acts of Parliament are supreme.

Feedback: Incorrect. The Queen is formally involved in the process of passing legislation through the process of royal assent to a bill, but the sovereign has no power today to determine the status or validity of legislation.

Reference: 1.6.2

Type: multiple choice question

Title: Chapter 01 - Question 05

05) Which of the following statements most accurately describes a consequence of the sovereignty of Parliament?

a. It limits the powers of the judges as a legislative body.

Feedback: Incorrect. Judges are generally careful not to act like legislators. Though there are debates about how far judges, in deciding cases, act as lawmakers of a sort, they certainly do not act collectively as a 'legislative body'. If you got this wrong, you may need to look more closely at the terminology we use.

Reference: 1.6.2

b. It permits the Justices of the Supreme Court to sit in the House of Lords when it is conducting legislative business.

Feedback: Incorrect. The Law Lords were permitted to participate in the legislative business of the House, but the Constitutional Reform Act 2005 separated the judges of the Supreme Court from the (legislative) House of Lords.

Reference: 1.7.3

***c.** It limits the ability of any UK court to disapply an Act of Parliament.

Feedback: Correct. This is very important. Even under the Human Rights Act, the courts cannot disapply an Act that has been passed by Parliament; they can only declare it incompatible (we discuss this in detail in Chapter 9). This is a direct consequence of the sovereignty doctrine. The *Factortame* principle introduces a limited exception under EC law.

Reference: 1.10.3

d. It prevents European law from overriding an Act of Parliament.

Feedback: Incorrect. Where there is a conflict, EC law is supreme by virtue of the European Communities Act 1972.

Reference: 1.10.3

Type: essay/short answer question

Title: Chapter 01 - Question 06

06) How are cases such as *R (Jackson and Others) v Attorney-General* [2005] UKHL 56 and *H v Lord Advocate* [2012] UKSC 24 changing our understanding of Parliamentary sovereignty?

a. These cases are at the forefront of a small but possibly significant trend within the judiciary to identify certain constitutionally fundamental legal principles and Acts of Parliament (such as the Act of Union and the Human Rights Act 1998) as having a protected status, such that the courts might seek to prevent (or at least subject to more stringent review) any Parliamentary attempt to remove or restrict those principles/laws. The statements to that effect in *Jackson* and *H* are suggestive and not binding, but nonetheless point to some

scepticism amongst the senior about the appropriateness of adhering to traditional notions of Parliamentary supremacy as absolute and unlimited.

Reference: 1.6.2

Type: multiple response question

Title: Chapter 01 - Question 07

07) The term 'delegated legislation' includes (select all that apply):

*a. regulations.

Feedback: Correct. This term is used to describe secondary or delegated legislation.

Reference: 1.6.3

b. Codes of Practice.

Feedback: Incorrect. This term is used to describe a type of informal rules, not secondary legislation.

Reference: 1.6.3

*c. statutory instrument.

Feedback: Correct. This is the proper name for the main category of secondary legislation.

Reference: 1.6.3

d. case law.

Feedback: Incorrect. This is another term for court decisions; it does not include written law passed through Parliament.

Reference: 1.6.3

Type: fill-in-blank

Title: Chapter 01 - Question 08

08) Delegated legislation derives its authority from the provisions of an Act of Parliament. This authorising Act is called the _____ Act.

Feedback: All delegated legislation requires this kind of formal authorisation, otherwise the person exercising the supposed delegated power will be acting unlawfully. The parent Act can also be called the 'enabling' Act.

Reference: 1.6.3

a. parent

Type: multiple response question

Title: Chapter 01 - Question 09

09) Tertiary legislation created by ministerial powers granted under the authority of statute may include (select all that apply):

a. statutory instruments.

Feedback: Incorrect. These are secondary legislation.

Reference: 1.6.3

*b. circulars.

Feedback: Correct. These may be one type of tertiary legislation, provided they have the force of law.

Reference: 1.6.3

c. directives.

Feedback: Incorrect. These are a type of EC legislation and so a type of formal rule. You may be confusing 'Directives' with 'Directions'.

Reference: 1.6.3

*d. codes of practice.

Feedback: Correct. These maybe one type of tertiary legislation, provided they have the force of law.

Reference: 1.6.3

e. by-laws.

Feedback: Incorrect. These are a type of secondary legislation usually created under powers delegated by statute to a local government or other statutory body.

Reference: 1.6.3

Type: fill-in-blank

Title: Chapter 01 - Question 10

10) Non-legislative guidance issued by government officials which is not tertiary legislation is commonly referred to as '_____ law'?

Feedback: This is distinct from tertiary legislation because it provides advice or guidance which is less formal and not strictly binding on the person to whom it is addressed.

Reference: 1.6.3

a. soft law.

Type: multiple choice question

Title: Chapter 01 - Question 11

11) The Health and Safety Commission is empowered by statute to produce Codes of Practice providing employers with advice on meeting their legal obligations. The Codes have a special legal effect. In legal proceedings, the Commission may use an employer's failure to abide by the Codes as evidence of fault by the employer, unless s/he can show that s/he has complied with the law in some other way. On the basis of this information, what is the most likely legal form of these Codes?

a. Statutory instrument.

Feedback: Incorrect. The Codes are made under delegated statutory authority, but not by Parliament.

Reference: 1.6.3

b. By-law.

Feedback: Incorrect. Even if we were to assume that the Commission might be the kind of body empowered to make by-laws, these rules lack the binding quality you would expect of a by-law.

Reference: 1.6.3

*c. Tertiary legislation.

Feedback: Correct. The term 'code of practice' is not of itself determinative, but the rules here (like the PACE Codes of Practice) are more than just guidance since they may have legal consequences.

Reference: 1.6.3

d. Soft law.

Feedback: Incorrect. The codes here are tertiary legislation. The distinction is not an easy one to make, but the fact that they have legal consequences suggest they are more than just soft law.

Reference: 1.6.3

Type: matching question

Title: Chapter 01 - Question 12

12) Match the appropriate definition to the two legal traditions.

Feedback: The two traditions are based upon different concepts of law and on different modes of legal interpretation.

Reference: 1.7.2, 1.8.1

a. Civil law. = This legal tradition relies on a conceptual approach to law. It relies heavily on codified law and tends to adopt inquisitorial court processes.

b. Common law. = This legal tradition relies on descriptive factual categories of law. It operates on a case-by-case basis and is based in the system of precedent. Court proceedings tend to be adversarial in form.

Type: matching question

Title: Chapter 01 - Question 13

13) Match the definitions of function to the court type.

Feedback: Trial courts and appellate courts have different functions and, generally, a different status in the court hierarchy. The appellate courts are particularly important to legal method because they are the main creators of precedent.

Reference: 1.7.3

a. Trial courts. = Their function is to hear cases at 'first instance', including considering submissions from the parties to the action and relevant evidence including witness submissions, if relevant and admissible.

b. Appellate courts. = Their function is to reconsider the application of legal principles to the case (which may be by way of case stated) or, in some instances, it may include a reconsideration of the facts.

Type: matching question

Title: Chapter 01 - Question 14

14) Match each civil court against its trial and appellate court status.

Feedback: If you are unsure of the status of each of the courts, please re-read the section in the textbook. The High Court has a dual role and its jurisdiction depends on the nature of the case that it is hearing. The other courts are either trial or appellate courts.

Reference: 1.7

a. County Court. = Trial court.

- b. High Court. = Trial court and appellate court.
- c. Court of Appeal. = Appellate court.
- d. Supreme Court. = Appellate court.

Type: matching question

Title: Chapter 01 - Question 15

15) Match each criminal court against its trial and appellate court status.

Feedback: If you are unsure of the status of each of the courts, please re-read the section in the textbook. The Crown Court has a dual role and its jurisdiction depends on the nature of the case that it is hearing. The other courts are either trial courts or appellate courts.

Reference: 1.7

- a. Magistrates Court. = Trial court.
- b. Crown Court. = Trial court and appellate court.
- c. Court of Appeal. = Appellate court.
- d. Supreme Court. = Appellate court.

Type: multiple choice question

Title: Chapter 01 - Question 16

16) If a judge has the title 'Lady Justice', to which court has she been appointed?

- a. Supreme Court.

Feedback: Incorrect. Judges in the Supreme Court carry the honorary title 'Lord' or Lady', but this is not the same: a Lady Justice sits in the Court of Appeal.

Reference: 1.7.3

- *b. Court of Appeal.

Feedback: Correct. Well done!

Reference: 1.7.3

- c. High Court.

Feedback: Incorrect. High Court judges are properly called Mrs, Ms or Mr Justice; the title 'Lady Justice' can only be used by a judge of the Court of Appeal.

Reference: 1.7.3

- d. Judicial Committee of the Privy Council.

Feedback: Incorrect. A Lady Justice sits in the Court of Appeal. Justices of the Supreme Court and judges from some Commonwealth courts sit on the JCPC, but not English Appeal Court judges

Reference: 1.7.3

Type: essay/short answer question

Title: Chapter 01 - Question 17

17) Summarise your understanding of the function of the Court of Appeal and the judges who sit in the court.

- a. This court has exclusively appellate jurisdiction. It is divided into Civil and Criminal Divisions. The Civil Division hears cases from the High Court as well as from the County Courts. The Criminal Division hears appeals against sentences or convictions from the Crown Court. Judges in this court are called 'Lord/Lady Justices of Appeal'. The 'Master of the Rolls' heads the Civil Division. The 'Lord Chief Justice' heads the Criminal Division.

Reference: 1.7.3

Type: multiple choice question

Title: Chapter 01 - Question 18

18) Which of the following types of EU legislation is directly applicable in all Member States?

- a. Decisions.

Feedback: Incorrect. Decisions are binding only on those Member States to which they are expressly addressed, not all Member States.

Reference: 1.10.2

- b. Directives.

Feedback: Incorrect. Directives generally lack direct applicability and have to be implemented by each Member State passing primary or secondary legislation to give effect to the Directive

Reference: 1.10.2

- c. Directions.

Feedback: Incorrect. We made this one up. 'Direction' is a term that may be used to describe a form of English tertiary legislation, but directions are not a type of EU legislation.

Reference: 1.6.3, 1.10.2

***d.** Regulations.

Feedback: Correct. Well done! Aside from some Treaty provisions, Regulations are the only kind of EU legislation which is directly applicable (ie comes into force without 'local' implementation) in all Member States.

Reference: 1.10.2

Type: essay/short answer question

Title: Chapter 01 - Question 19

19) Can the European Convention of Human Rights be described as an institutional source of English law? Discuss (250 words maximum).

a. This is a more difficult question than it looks at first sight. We do describe the Convention as an 'institutional source'; strictly, however, you might take a different view. Since the passing of the Human Rights Act 1998 (HRA), Convention rights have become an enforceable part of English law. To that extent, practically speaking, the Convention, and the case law of the ECtHR, could be seen as an institutional source in much the same way that EC law is an institutional source. On the other hand, formally speaking, the Convention rights only take effect because they have been incorporated directly into the HRA – a statute of the Westminster Parliament. Strictly, then, it might be said that the 'real' institutional source of human rights law in the UK is the Westminster Parliament, not the Convention itself. It seems quite a fine distinction, but it might be significant in, for example, discussions about how easily or not the HRA could be repealed in the future.

Reference: 1.6.2, 1.9, Chapter 10.