



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PUBLIC LAW AND THE LEGAL SYSTEM

Monday 6 February 2017

**0900 – 1200
(Three Hours)**

Candidates should answer FIVE questions ONLY

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Question 1

“Not all precedents are binding. This principally depends upon two factors: firstly, whether or not the ratio in question is in point, and secondly, upon the relative position in the court hierarchy of the court examining the precedent, to the court which laid down the precedent.”

White, Willock and MacQueen, *The Scottish Legal System* (5th edition, 2013) para 12.17

Discuss. Your answer should be illustrated with examples.

Question 2

“We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said.”

Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG
[1975] AC 591, at 613 (per Lord Reid)

Discuss whether this accurately represents the modern approach to statutory interpretation. Your answer should be illustrated by reference to case law.

Question 3

Detail the sources of law in Scots law, and briefly discuss (with reference to examples) the relative weight of each source when used in legal argument.

Question 4

In the *Miller* case the UK Supreme Court said that Brexit would involve as ‘fundamental’ a change in the United Kingdom’s constitutional arrangements as joining the European Community in 1973. What will that change involve?

Question 5

Section 28(8) of the Scotland Act 1998, which was inserted by section 2 of the Scotland Act 2016, provides as follows:

'But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.'

Section 28(7), the immediately preceding subsection, provides:

'This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.'

Outline the background to and comment on the legal and constitutional significance of section 28(8).

Question 6

The Scottish Parliament is a Parliament of 'bounded competence'. Outline THREE restrictions on the Parliament's legislative competence. How are those restrictions policed?

Question 7

In what ways has the 'incorporation' of the European Convention on Human Rights into domestic law, by the Human Rights Act 1998 and the Scotland Act 1998, altered the approach to the protection of fundamental rights in the United Kingdom?

Would repeal of the Human Rights 1998 make any difference to the protection of those rights?

Question 8

The priority for Parliament is holding the Scottish Government to account.' By what means does the Parliament seek to hold the Scottish Government to account?

How effective is it doing so?

Question 9

'Judicial Review is a critical check on the power of the State, providing an effective mechanism for challenging the decisions of public bodies to ensure that they are lawful.'

Explain and discuss.

Question 10

'My ultimate commitment is to ensure justice for the people of Scotland.'
(Scottish Public Services Ombudsman's Annual Report 2012-13)

What part does the Scottish Public Services Ombudsman play in ensuring justice for the people of Scotland?

END OF QUESTION PAPER