

1) Describe the role of the Law Commission?

The Law Commission is the independent body set up by Parliament in 1965. It was set up to keep the law of England and Wales under review and to recommend reform when it is needed. They also work on consolidation of statutes and help with the drafting of proposed Bills. The Commission does not give legal advice to individuals or investigate complaints. The role of the Law Commission is set out in s 3 of the Law Commissions Act.

Topics may be referred or it may select areas in need of reform and seek governmental approval to draft a report on them. The Law Commission researches the area of law which is thought to be in need of reform. It then publishes a consultation paper seeking views on possible reform. The consultation paper will describe the current law and state the problems and then suggest options for reform. After a response to the consultation paper the Commission will then draw up proposals and then present them in a report. There is often a draft Bill attached to this. The draft must go before Parliament before it may become a Law. Recent legislation based on the Law Commissions proposals is the 'Law Reform (Year and a Day Rule) Act 1996

When the Law Commission repeals a law they make a Statute Law Bill which gets rid of old, ridiculous and any statutes that have long since ceased to have any relevance. For example the Statute Law Repeals Act 1995 repealed 223 whole Acts and parts of 259 others. Repealing helps make the law more accessible.

When the Law Commission consolidates they gather all previous statutes and case law together in one act for example Sale of Goods Act 1994 codified the law. The Law Commission produces about 5 Consolidation Bills each year. Consolidation helps make the law more accessible.

2) Explain in the following situations if there would be a successful judicial precedent?

- (a) A government minister wishes to appeal an old law. He has not consulted relevant bodies, which are affected by the proposals, before introducing new regulations.**

The issue in this case is that a Minister has introduced new regulations without consulting the relevant bodies. There are grounds for judicial review under Procedural Ultra Virus. Procedural Ultra Virus is when the person or body have not followed instructions set out in the Enabling Act. To make this regulation the Minister should have followed the required procedures to inform the relevant bodies and has therefore acted Ultra Virus, that is, beyond the powers given. (Aylesbury Mushroom Case 1972)

- (b) A government minister is given power to make regulations concerning legal funding. He has now introduced a regulation on immigration.**

The issue in this case is that Minister has made regulations on immigration and not legal funding. There are grounds for judicial review under Substantive Ultra Virus. Substantive Ultra Virus is when the person or body making the law has gone outside the powers given set out in the Enabling Act. When told to make regulations on legal funding the Minister instead made regulations on immigration and therefore has gone beyond the powers he has been given. (R v Wood 1855)

- (c) A government minister has made regulations which are argued to be unreasonable.**

The issue in this case is that the Minister has made regulations which are argued to be unreasonable. There are grounds for judicial review under Irrationality/Unreasonableness. Being Irrational or Unreasonable is when a person or body has made a law which is not of good faith, manifestly absurd and not safe. As the Minister has made a regulation which is argued to be unreasonable it will be seen as Ultra Virus. (Strickland v Hayes 1896)

3) i) Describe statutory instruments and two other types of delegated legislation, using the Source and other examples?

Statutory Instruments are rules and regulations made by the government ministers and are the most common type of delegated legislation. Ministers and government make regulations for areas under their responsibility. This allows the experts in that area to fill in any detail. For example, the Lord Chancellor has power regarding the legal aid schemes, whereas, the Minister of transport is able to deal with road traffic regulations. They are introduced by either affirmative or negative resolution procedure. There are about 3000 statutory instruments brought into force every year. An example of Statutory Instruments is the Serious Organised Crime and Police Act 2005.

Another type of delegated legislation is Orders in Council. Orders in Council are made by the Queen and the Privy Council. The Privy Council is made up of the PM and other leading members of the Government. This type of delegated legislation allows the Government to make legislation without going through Parliament. They are mainly used to give legal effect to European Directives. Although they can be used in emergencies under the Emergency Powers Act 1920, dissolve Parliament in preparation for a general election and matters of the Church of England. An example of Orders in Council is the Afghanistan (United Nations Sanctions) Order 2001.

The final type of delegated legislation is Bylaws. Bylaws are made by local authorities, public bodies and semi-private bodies such as the National Trust and Train Companies. For example, the London Underground implemented a bylaw on a smoking ban. Bylaws are not just rules but fully enforced laws which can be tried in court if broken. Before being approved by the Secretary of State, the Bylaws must first be advertised to allow people a chance to comment and challenge their ideas.

ii) Discuss the effectiveness of Parliamentary and judicial controls over delegated legislation?

A problem with Parliamentary and judicial controls over delegated legislation is that there are strict time limits within which a judicial review action must be brought forward. One problem with this is that delegated legislation is not well advertised and, as a result, by the time someone has become aware of the legislation, they are out of time to bring action.

Another problem with Parliamentary and judicial controls over delegated legislation is that judicial review actions have to be funded by the individual who brings the case and not the Government. This often puts people off as they might not have enough money or just don't want to waste money in that way. It could be argued that the Government should pay because they are the ones that gave out the legislation and have not checked what has been done correctly.

Additionally, many cases fail at court because statutes often use very broad terms which allow for a wide discretionary powers to be interpreted by the court.