Model Answers to Potential Exam Questions

Chapter 1

1) Outline, using examples, the sources of the English Legal System.

The English Legal System has a number of sources — some domestic and some international. Its domestic sources are found in legislation, equity and common law. Its international sources have arisen due to the UK’s membership of the European Union (EU) and its status as a Signatory Party to the European Convention on Human Rights (ECHR).

The highest source of law in the English Legal System is an Act of Parliament, also known as a statute. This is due to the doctrine of parliamentary sovereignty, which states that Parliament is the highest legal authority. No court may question an Act of Parliament; the role of the judiciary is to apply the law to give light to the intentions of Parliament. A further form of legislation is developed when Parliament creates a primary Act of Parliament which gives power to another body such as a minister or a Local Authority to make laws. This is known as delegated or secondary legislation. There is an increasing body of secondary legislation; however, due to its delegated status, it can in certain circumstances be struck down by a court.

A further source of the English Legal System is equity. Equity developed from the legal principles of the Court of Chancery, which was created by the Monarch to provide redress for those who could not access the common law. The law on equity fused with the common law through the Judicature Acts 1873-75. Equitable principles, discretionary principles based on equality and fairness, can now be relied upon in the court system alongside legislation and the common law. Due to parliamentary sovereignty, an Act of Parliament prevails over an equitable principle. However, in case of a conflict between an equitable principle and the common law, the equitable principle will prevail.

The English Legal System is a common law legal system. This means that an important source of law is found in the judgments laid down by the judiciary. The common law developed after 1066 when judges toured the country making decisions which applied to all. The system operates according to the doctrine of binding judicial precedent or stare decisis. This means that judges have to follow past binding precedents and in doing so they develop a body of legal principles which form an extensive source of law in the English Legal System.

Increasingly, the English Legal System is being impacted upon by the UK’s international obligations. Through the European Communities Act 1972 the UK incorporated the law of the European Union into the English Legal System. Laws emanating from the European Union can be relied upon in the court system due to the principle of direct effect. A further source of law can be found in the European
Convention on Human Rights (ECHR), which was incorporated into the English Legal System through the Human Rights Act 1998. Through this Act, the decisions of the European Court of Human Rights are persuasive in relation to a case in the English Legal System and judges are under a duty to interpret statutes in the light of the articles of the ECHR.