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General Certificate of Education

Law 1161

Unit 1 (LAW01) Law Making and the Legal System

Report on the Examination

2010 examination - June series

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Unit 1 (LAW01): Law Making and the Legal System

General

LAW01 used the new numbering style for the first time this summer and centres are thanked for preparing so thoroughly their candidates to work with the new numbering system and the new style answer book. The majority of candidates responded well to the changes to the June 2010 exams, but where difficulties were experienced, centres are asked to draw candidates' attention to the comprehensive range of guidance material that is available on this subject in order that they are confident about what is required of them in future examinations. Support available on this issue includes Guides for teachers and students, and specimen question papers and mark schemes showing the changes in action. All documents published in support of the changes to exams can be accessed via notices published on all qualification homepages, all subject notice boards, and on the parent and student area of the web.

Centres will note that the AO3 marks are attached to the evaluative questions only, so candidates who do not attempt these penalise themselves.

Many candidates seemed better prepared for Section A as often two of their topics were chosen from this section. The standard of response to some topics in Section B was often lower – this applied particularly to the Legal Profession and the Judiciary. Some candidates in their choice of topics need to look carefully at the precise wording of the question: for example, in Q20 and Q21, the sources of funding and advice to be described and commented upon referred to a serious criminal case scenario, and in Q22 the problem concerned a negligence claim.

There were a significant number of answers which failed to use correct terminology, such as charged, prosecuted, tried, verdict, acquitted, convicted, sentenced in the correct context. Furthermore, many candidates needed to be more accurate in their usage and understanding of Latin phrases, such as in Q08 (re rules of language) and Q10 (*obiter dicta*).

Question 01

Candidates who chose to answer on pressure groups could have given a general description of the meaning of a pressure group, how and when they can influence, who they can influence, the effect of such influence, and could have included examples of groups and their campaigns. Candidates who chose the Law Commission could have included who sits on the Commission, how it works in investigating issues, its role in codifying and/or consolidating law, its role in recommending repeals of old law and examples of its reports.

The more popular option was pressure groups, though there were some strong answers covering the Law Commission. Some candidates failed to give examples of pressure groups or merely recited what a pressure group was rather than considering their influence on Parliament. Candidates who did give examples cited Snowdrop, environmental groups such as Greenpeace, outsider groups such as Fathers4Justice and the Animal Liberation Front. Stronger candidates managed to give examples not only of pressure groups but of specific campaigns and the resulting legislation made by Parliament, such as the Hunting Act and Jamie Oliver's school dinner campaign. Fathers4Justice featured heavily and the fact of their stunts not having a great effect on Parliament was mentioned frequently. There were some inappropriate examples of pressure groups, such as the BA strikers. Some of the detail given could have focussed more specifically on the impact on the making (or not) of statute law, rather than merely describing the influence.

Question 02

Candidates tended not to treat the PCs equally and there was much less coverage of Green and White papers. Most answers described the stages in the House of Commons well, though it was slightly disappointing to see that the descriptions were generally fairly mechanical and only the best answers were able to include specific examples of a bill at the various stages. Many candidates included a description of stages in the House of Lords and the nature of the giving of Royal Assent, which was not asked for and could receive no credit. However, references to 'ping-pong' and the supremacy of the Commons over the Lords could receive credit. Few answers were able to describe accurately the nature and purpose of Green and White Papers: a common misconception was that they form the initial readings in the Commons. Fewer answers still were able to give examples of either. As is well known, Green Papers are consultative documents which often offer a range of options: they invite comments from interested parties which help formulate ideas for future legislation. White Papers are a statement of government's firm intent: they form the basis of draft legislation and are directed to those who draft the bill which is then considered by Parliament. Examples were rare.

Question 03

Points that could have been made in this discussion could have included possible delay in dealing with issues after an event; that often legislation is a result of political influence and interest rather than a genuine public debate on an issue; that MPs are often subject to whipping by their party, leading to criticism that they are not truly representing the views of their electorate; that laws passed are often difficult for the general public (and lawyers) to understand; that there is often piecemeal development when a new law is passed leading to the need to read more than one statute to understand the law; that often a law is the result of a compromise between the Commons and Lords. Generally, the answers were not well developed, as answers concentrated on the long process, though some stronger answers noted government ability to push through legislation on a large majority.

Question 04

The explanation of statutory instruments could have referred to the point that they are laws made by government ministers with delegated powers under authority of a piece of primary legislation, that ministers generally consult, draft and lay them before Parliament, and that SI can be used as commencement orders. Better answers included examples. For Orders in Council, answers could have covered who sits on the Privy Council, when it meets, what laws are made by it, and examples. The examples often given were from 09/11, the petrol tankers strike and following the Chernobyl explosion.

This was a very popular topic and responses were generally good, although few candidates gave actual examples of statutory instruments. Many candidates gave too much detail on parent Acts with limited coverage of the statutory instrument. Knowledge of Orders in Council was generally good, though some confused them with by-laws. A significant number of responses referred to controls on statutory instruments, which could not be credited.

Question 05

This could have covered any of:

- Parliament not in session when emergency arises
- lack of parliamentary time
- need for detail to fill in outline of primary legislation
- need for specialist rules
- need to set starting date for primary legislation
- need to update rules eg amount of fines
- need to deal with local issues eg by laws
- need to deal with specific needs of public authorities eg transport providers.

Whichever points were made, better candidates supported their answers with examples.

A significant number of candidates misunderstood this question and were unable to interpret its requirements. As a result, their answers tended to focus on control, which could receive little credit. Answers which correctly interpreted the question were generally good, covering several relevant points.

Question 06

Points that could have been made included the undemocratic nature of delegated legislation, the sheer volume, a lack of publicity of laws made, the need for forms of control, the limited scrutiny and control of Executive power, that at times delegated powers impose taxes (eg through the budget) and the length and expense of challenging delegated legislation through the judicial review process. Most answers gave detailed responses to this question, the stronger answers discussing a number of disadvantages in detail.

Question 07

The topic of statutory interpretation appeared to be the most popular on the paper. For internal aids, candidates could have referred to the long and short titles of an Act, and/or the preamble, schedules, the definition or interpretation sections. As with other topics, the best answers attempted to include an example to illustrate an aid.

For external aids, candidates could have referred to the inclusion of documents outside the Act such as dictionaries, treaties, reports on which the Act is based, the Interpretation Act, the use of Hansard. Again, the best answers contained examples. Generally, the coverage of external aids was more detailed than internal, although there were some excellent examples of answers to internal aids. In respect of external aids, many candidates believe Hansard to be a record of court cases, rather than a report of parliamentary proceedings.

Question 08

For the literal rule, answers could have included the meaning of the rule – giving the words their ordinary dictionary meaning, supported by cases/example(s). The best answers went further, setting out the facts of the well-known cases of Whiteley v Chappel, Berriman v LNER, Fisher v Bell and DPP v Cheeseman to show how the use of the literal rule enabled the judges to reach the decisions they did. Generally, most candidates scored well on this part.

In relation to the rules of language, most answers opted for the *ejusdem generis* rule – supported by the example of Powell v Kempton Park Racecourse. Some answers chose either the *noscitur* rule or the *expressio* rule – referring to a case example in support. This part often caused some difficulty by way of confused and poorly written explanations. Some candidates attempted to explain all three of the rules when only one was required. It was surprising how many answers referred to the golden rule or, less often, the mischief rule as one of the rules of language.

Question 09

In this question, candidates could build on the description in Q8 to discuss the advantages and disadvantages of the operation of the literal rule.

A discussion of advantages could include points such as judges respecting and applying the will of Parliament, therefore its democratic nature, its predictability and certainty.

The discussion of disadvantages could include its rigidity, leading to bad precedents, and in some cases absurd results, as in Berriman; that it cannot be used if words are not in the Act; that it cannot be used if words are capable of more than one meaning; and the possible need

for Parliament to rectify error following the case, as with Fisher v Bell. Most candidates could produce a reasonable response, the stronger answers being supported with illustrative cases. However, many candidates gave rather superficial answers, such as saving time, and incorrectly referred to the literal rule in connection with sentencing.

Question 10

An explanation of the term 'hierarchy of the courts' could include an outline of court structure (civil and/or criminal), which courts bind others, which courts are bound or not bound, why there is the need for hierarchy, and how each court treats its own previous precedents.

An explanation of the term *obiter dicta* could include the straight translation of 'other things said by the way'; that it is the non-binding part of the judges' decision; that it does not have to be followed by other judges; that it may be persuasive. Cases/examples to illustrate this were often seen and included part of the Donoghue v Stevenson judgement, Howe, Gotts and the more recent example of DPP v Smith.

Most candidates could outline the hierarchy of the court system (either civil or criminal), but fewer were able to explain the significance of the hierarchy. Weaker answers merely identified the courts. A substantial number of answers failed to refer to *obiter dicta* at all. However, many were able to explain the principle and illustrated it by one of the relevant cases.

Question 11

Candidates could choose any of:

- the House of Lords/Supreme Court using the 1966 Practice Direction or its power to overrule/distinguish or disapprove any precedent from a lower court. The traditional example of Herrington was often seen but it was also encouraging to see R v R&G and a more recent example such as Hoare being used.

- the Court of Appeal having the power to overrule, distinguish or disapprove any precedent from a lower court, by (in civil cases) using the rule in Young v Bristol Aeroplane; and/in criminal cases to avoid injustice. Fewer case examples were seen here.

- for other judges. the power to distinguish: the traditional case examples of Merritt and Balfour and of Brown and Wilson were often seen here.

- overruling, which could include an outline of the meaning of overruling, who can overrule, with case/example(s).

- disapproving, which could include an outline of the meaning of disapproving, who can disapprove, with case/example(s).

The most popular response was to tackle 'distinguishing' and to support the answer with one of the cases. There was at times a little confusion between 'overruling' and 'reversing'. The Practice Statement and the rights of the Court of Appeal with cases to support were often explained well.

Question 12

Most students followed the instruction in the question, though some answers did include a discussion of several advantages and/or disadvantages. The advantages could have included any of:

- flexibility
- dealing with real cases
- providing detailed rules for later cases
- just
- authoritative and impartial decisions
- certainty.

The disadvantages could have included any of:

- undemocratic
- case having to come to court
- case having to reach higher courts
- multiple reasons for decision
- difficulty in identifying *ratio*
- the number of precedents/diversity of law reporting
- inflexibility.

Whichever points were made, better answers referred to case examples to support the discussion. Most candidates could give two advantages and two disadvantages of judicial precedent but many resorted to general statements and failed to develop their responses to allow them to achieve higher marks.

Question 13

For negotiation, candidates could have included how negotiation arises, types of cases dealt with, process (such as face to face, conference phone, text or email) and outcomes.

For mediation, candidates could have included how the process comes about, who acts as mediator, types of cases dealt with such as family or neighbour disputes, the process of mediation and possible outcomes. Answers describing the process and forms of mediation tended to be stronger, as candidates rarely gave examples of types of negotiation and when it may be used in civil cases.

Question 14

Answers could have included the qualification of arbitrator, how arbitration can come about (from a clause in the agreement), types of cases dealt with (mobile phone and package holidays were frequently quoted), nature of hearing, the possible outcome, the possibility of an appeal, and the enforcement of any award. Generally, answers showed a good understanding of the process of arbitration, though at times it was confused with the process of tribunals. Stronger answers quoted the Arbitration Act 1996 and explained when arbitration could be used. A lot of candidates included advantages of arbitration in their response, which could receive no credit.

Question 15

Discussion could have included points such as the lack of state funding and no win-no fee funding, the cost of issuing an ADR claim, particularly for tribunals and arbitration, and possible imbalance between parties where one side is represented and the other is not; limited appeal rights; unpredictable decisions due to lack of precedent; or limited public awareness of the forms of ADR. Sound responses supported a particular disadvantage with supportive evidence. Wise candidates could include comments about tribunals as well as other forms of ADR, even though they were not referred to in the previous questions on this topic.

Question 16
Candidates could have included: deciding bail/custody issues; at any trial, hearing the evidence and deciding the guilt/innocence of the defendant; deciding possible sentences. If the case is not dealt with in the normal court, there could have been a reference to sending cases to Crown Court for trial or sentence, out of court issuing warrants to the police, and the work of specialist panels such as the Youth Court, Family Court or Licensing Appeals panel. The best answers accurately explained the criminal work of the magistrates and the other matters that they have responsibility for. They also accurately used basic terms such as summary, either-way and indictable offences. Some answers dealt with qualification and appointment of lay magistrates, which could receive no credit.

Question 17
Jury qualification could include reference to age, being on the electoral register, residence in the UK and the random selection by Central Summoning Bureau. Reasons for not serving include disqualification, deferral, and other good reasons. Selection of potential jurors relates to the ballot in the jury room and in court, as well as vetting and challenges. Many candidates still seem to think that the police and lawyers are exempt from jury service, despite the law having changed in 2003.

Question 18
Most answers followed the instruction and discussed one form only of lay persons.

Discussion of lay magistrates could have referred to trial by peers, open justice, public confidence, fairness, limited number of appeals, cost compared to judge-only trials and the reduction of professional involvement.

Discussion of jurors could have mentioned similar issues, including that it is long-established, trial by peers, open justice, public confidence, fairness, and the reduction of professional involvement. Generally, answers dealing with juries contained case examples, often Owen and Ponting, and therefore scored slightly better.

Question 19
Description of a solicitor's work could include (during civil disputes) any of: negotiation; the giving of initial advice and assessing the merits of the claim; the preparation of claim; obtaining evidence; and possible advocacy. In criminal cases, it could include duty solicitor work and advice, Magistrates Court work, preparation of case for Crown Court, and instructing and assisting a barrister. In non-contentious work, it could have referred to areas such as conveyancing, probate, family and commercial work, with possible reference to specialisation of city firms.

A description of a barrister's work could have referred to the provision of advocacy in court and general rights of audience, advice and conduct of any possible appeal, giving specialist advice out of court, the preparation of specialist documents, with possible reference to access to a barrister – either via solicitor or by BarDirect – and an outline of the cab-rank idea. In general, answers on the work of a solicitor were more accurate and scored higher marks. At times, weaker answers dealt with training rather than work, but this could receive no credit.

Question 20
Answers could have included the 24-hour duty solicitor at the police station, duty solicitor at the Magistrates Court, and ultimate representation at Magistrates and Crown Courts by solicitor and barrister. Few answers were able to explain accurately the different forms of advice; most suggested that Keith might obtain advice from the CAB, over the internet or from other advice

agencies. It is very unlikely that a person charged with a serious offence would be allowed contact with anyone other than a duty solicitor.

For payment of legal advice and representation, this could have covered private finance, free 24-hour duty solicitor scheme at the police station, free duty solicitor at the Magistrates Court, or a Legal Representation Order for court hearings. Again, few were able to cover accurately any of these forms of funding. Most answers confused civil funding, suggesting that Keith could negotiate a no win-no fee arrangement with his lawyer.

Question 21

As the description in Q20 had often been inaccurate, answers to Q21 tended to be very general or based on civil funding arrangements. The disadvantages of methods of criminal advice funding could have included that in theory there is 24 hour/7 day a week cover, but in practice cover is patchy, advice may be by telephone only, and that there are quality issues relating to the advice given at the police station. Also, if Keith was paying privately, there would be high costs for him.

The disadvantages of methods of representation could include the limitations on duty solicitors in a Magistrates Court as they are allowed to offer first appearance only, and the fact that the scheme does not extend to minor motoring and non-imprisonable offences; there are financial constraints on Criminal Legal Representation orders such as low financial limits on capital and income, with high financial contributions; there is a narrow test for deciding whether it is in the interests of justice to provide funding; and the high cost of private funding due to the dual fees of both solicitors and barristers.

Generally, as candidates showed limited knowledge of the funding arrangements, they were only able to comment very superficially on their availability.

Question 22

Answers could have covered how a judge has to deal with pre-trial issues such as tracking and case management, in court hearing evidence and legal arguments, ruling on legal issues, finally deciding liability and calculating an award of damages/remedy. Better candidates clearly understood the role of a judge in a civil case, often showing an understanding of pre-trial issues and case management issues. However, many answers showed confusion between civil and criminal cases, often referring to the prosecution and defence and stating that the judge would direct the jury on guilty/not guilty verdicts.

Question 23

Answers could have covered eligibility, the placing of advertisements, the whole application process, with reference to the work of the Judicial Appointments Commission and finally appointment by the Queen. Many answers did show good knowledge of the Constitutional Reform Act 2005 and were able to explain clearly the procedures introduced by that Act. However, there were still a number of candidates who did not seem familiar with this process and still referred to secret soundings and choice and appointment by the Lord Chancellor and the role of the Prime Minister. These answers also tended to be based on eligibility alone.

Question 24

Candidates were able to use the material from Q23 to discuss the advantages and disadvantages.

Advantages could have included the level of legal knowledge required by eligible candidates, together with knowledge of court rules and procedure, that the new methods provide a choice of the best applicants, that in future the judiciary may be more balanced by gender and race, that

training is provided for all judges, and that the JAC is completely independent of political involvement.

Disadvantages could have included that in view of salary levels and conditions of service, the best lawyers may not apply; that for higher level positions there still is a predominance of barristers appointed and so the judiciary as a whole remains not reflective of the country; and that, despite the training, judges may not be experienced or knowledgeable in the area of law they are required to sit in (this applies principally to some judges hearing criminal cases). If candidates had been able to describe accurately the appointment process in Q23, they were usually able to make some of these points. If, however, they were not familiar with the new arrangements, the points made were superficial and/or outdated.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website: http://www.aqa.org.uk/over/stat.html.