



General Certificate of Education

Law 1161

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

Report on the Examination

2011 examination - January series

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

General

There was some variation in the quality of scripts, with some centres' candidates clearly having been better prepared than others. The majority of candidates complied with the rubric requirements and most attempted nine questions. Inevitably, some questions were more popular than others and, on the whole candidates tended to do two questions from section A and one from section B.

Parliamentary law making, delegated legislation and criminal courts and lay persons were the most common choices.

As will be commented on later, a good number of candidates appeared to have failed to look carefully at the **precise requirements of the question** before they started. They seemed to write a pre-prepared answer to a different question from that which appeared in the paper.

Section A - Law Making

Parliamentary Law Making

Question 01

The question asked candidates to explain briefly the meaning of Parliamentary supremacy and to outline one limitation on this doctrine. This could have covered reference to Dicey's meaning of legal and political sovereignty, and the fact that one parliament's law is not binding on its successors. Limitations could have referred to any of devolution, the supremacy of EU law or the need to comply with the Human Rights Act. Answers varied between those from candidates who clearly knew the topic and wrote with authority and discussed limitations with examples, particularly referring to the EU and to the **Factortame** case, and those candidates who clearly did not know what Parliamentary supremacy was. Some discussed conflicts between Commons and Lords rather than about the primacy of Parliament as a whole.

Question 02

The requirement of this question was to describe one of the influences operating on Parliament as a law maker. Candidates could choose from the Law Commission, the media, pressure groups and political influence. There were some very informative answers to this question, whatever the choice. Pressure groups were the most popular option, followed by the Law Commission and a few dealt with media influences.

For the Law Commission, answers could have referred to who sits on it, how it works in investigating issues, its role in codifying and consolidating law, and its role in recommending repeals of old law. An example or examples of its work would have enhanced answers. The Law Reform (Year and a Day) Act 1996 was often mentioned. Candidates who chose this influence generally showed the best understanding of an influence.

For pressure groups as an influence **on Parliament**, answers could have included a general description of the meaning of a pressure group, how and when they can influence, who they can influence, the effect of the influence and, campaigns, again supported by examples. Most answers referred to at least one example, with Fathers4Justice and Greenpeace often appearing. However, many answers could have focused more obviously on the impact on "Parliament as a law maker" rather than the government.

The description of media as an influence could have included how and when they can influence, who they can influence, and the effect or success of media campaigns, with example(s). The Jamie Oliver campaign was often mentioned and, though this did not bring about a change in the law, it was still credited.

There were very few descriptions seen of political influence, though if covered it could have included the influence of different political parties, with possible reference to European Union.

Question 03

This question required a discussion of the advantages and disadvantages of the influence described in the previous answer.

For the Law Commission, advantages could have referred to the legal expertise of the Commissioners; that investigations and reports are well informed and researched; that it is an independent and non-political body; and that draft laws are presented with its report to Parliament.

Disadvantages of the Law Commission could have referred to the record of non-implementation of reports and recommendations, and that there are often lengthy investigations on an issue, perhaps due to the number of investigations undertaken.

For Pressure groups, there are many points that could have been made. Advantages could have referred to the raising of public awareness of an issue, keeping Parliament in touch with issues of public concern, that they are often non-political and can influence all political parties. They are often seen to be experts on a single issue. The size of membership of some groups means they can be representative of the general public, perhaps more so than some political parties. Some can provide international experience through their connections and membership. Insider groups are likely to 'have the ear' of decision makers. They can be particularly successful if they have media support.

Disadvantages of pressure groups could include that they are undemocratic and often provide a one-sided argument. At times they can encourage undesirable or illegal tactics to promote their view and recent examples of Fathers4Justice and student demonstrations were often mentioned. They can represent small numbers of members. Outsider groups are unlikely to exert much influence on decision makers. The group is unlikely to be successful if it does not have media support.

Advantages of the media could include that they raise issues of public concern with decision makers, that they can support and publicise the work of pressure groups and that they can raise public awareness of an issue.

Disadvantages of the media could include that their campaigns can lead to 'knee jerk' legislation, such as with the Dangerous Dogs Act, that they are commercially-orientated means they can pick and choose which campaign to promote, and so may not be objective.

Advantages of political influence could include democratic nature of proposed law, particularly if contained in election manifestos, and the likelihood of success if proposed by governing party. Disadvantages of political influence could include its non-democratic nature towards beginning and end of parliamentary term, and that they deal with live issues such as anti-terrorism measures.

There were some very good answers to this question with most candidates being able to offer valid advantages and disadvantages, although in some weaker answers there was a tendency to repeat what had already been described in question 02.

Delegated Legislation

This was the most popular topic on this part of the paper.

Question 04

This required an outline of what is meant by statutory instruments and by-laws. The outline of statutory instruments could have included a general introduction describing delegated legislation as a form of law made by government ministers with delegated powers under authority of primary legislation and a description of how these laws are made. Examples of this form of law would considerably enhance an answer. The alternative use of such law in making commencement orders would also have received credit. The outline of by-laws could have included how and when they are made by local authorities and other bodies such as train companies. Again, examples of both types of by-laws, would have enhanced an answer.

There were some very good responses to this question, with detailed explanations and clearly described examples. However, as mentioned in previous reports, many answers referred to an Act such as the Dog (Fouling of Land) Act as being a piece of delegated legislation, whereas this is the piece of primary legislation, and it is the by-laws made under it that is the delegated legislation. A few candidates mixed by-laws or statutory instruments with Orders in Council.

Question 05

This question required a description of judicial controls on delegated legislation. This could have included a description of judicial review and the grounds for it, including procedural, substantive and reasonableness, each supported by a case or example. The best answers were able to cover all aspects of these controls and supported them with relevant examples. Many answers also referred to parliamentary controls, which could receive no credit at all.

Question 06

This question required a discussion of why there is a need for delegated legislation in the English legal system. This could have included points such as:

- need to act with speed if Parliament is not in session when an emergency arises
- need for detail to fill in outline of primary legislation
- need for specialist rules
- need to be flexible
- need to set starting date for primary legislation
- to update rules, eg amount of fines
- need to deal with local issues
- to deal with specific needs of public authorities, eg transport providers.

This was generally well answered by most candidates, as they were able to cover a number of these points and often support the points with an example or detail.

Statutory Interpretation

Question 07

This question required a brief description of **either** internal **or** external aids, and **one** rule of language. Internal aids could have included reference to such as the long and short titles, the preamble, definitions, schedules and any interpretation section. External aids could have included reference to documents outside the Act such as dictionaries, external treaties, reports

on which the Act is based (such as law Commission reports), the Interpretation Act and Hansard.

Rules of language could have included the *ejusdem generis* rule, the *noscitur* rule, the *expressio* rule. Case examples for the chosen rule would have enhanced the answer. The internal or external aids part of the question was often answered well with supportive examples but some candidates did not deal with the rule of language or failed to recognise what it was, often describing the literal rule of interpretation instead.

Question 08

This question required an outline of the purposive approach **and** the golden rule of statutory interpretation. The outline of purposive rule could have included an indication of the rule when judges try to find the intention of parliament; it comes from the EU approach.

The outline of golden rule could have included reference to the judge selecting a meaning to avoid absurdity, or modifying the literal meaning of a word to avoid absurdity.

There were some very good answers, when both rules were well explained and supported by well explained cases. The ***RCN v DHSS*** case was often used to support the outline of the purposive approach. This rule was often explained as though it was the 'mischief rule', supported by an outline of ***Smith v Hughes***, which did receive limited credit. It is true that some of the mischief rule cases can be cited as illustrating the purposive rule, but candidates could have been expected to have explained how the approach of the two rules is slightly different. Stronger answers referred to the influence of Europe in the development of the rule.

Often the outline of the 'golden rule' contained greater detail with many candidates able to refer to both the narrow and the wide application and was often supported by cases such as ***R v Allen*** and ***Re Sigsworth***.

Question 09

In this question, candidates were asked to discuss advantages **and** disadvantages of **either** the purposive approach **or** the golden rule.

Advantages of purposive approach could include that the rule is flexible, it can avoid unjust and absurd decisions, it gives effect to the intention of Parliament, and is consistent with the EU approach. Disadvantages could be said that it is of an undemocratic nature as is judicial law making. Likewise, it can be inconsistent; a result can be difficult to anticipate; decisions may be made on public policy grounds.

Discussion of advantages of the 'golden rule' could include that it prevents unjust and absurd decisions and it can give effect to intention of Parliament. Disadvantages could include the problem what is an absurd outcome. It is said to give too much power to judges and can be said to be undemocratic, as it is judicial law making.

Many candidates produced rather generalised responses, with often the same arguments being put forward whichever rule had been chosen, without specific supportive proof by way of example. Only a limited number of answers were able to refer to arguments such as those used by Lords Denning and Simmonds on either side of the purposive rule debate.

Judicial Precedent

Question 10

This question required candidates to outline the key features of precedent, which could include principally the hierarchy of courts, law reports, *ratio decidendi* and *obiter dicta*, but could also include binding and persuasive precedent and the meaning of *stare decisis*. There was potentially a great deal of information available, but it should have been seen nevertheless as an 'outline' of the features of precedent and candidates needed to model their answer to meet this challenge by concentrating on the 'key' features. This was generally well answered, and there were many excellent responses with examples of each of the 'key' features.

Question 11

This required an explanation of how the Supreme Court (formerly the House of Lords) **and** the Court of Appeal can avoid following a precedent

For the Supreme Court this could have included principally the 1966 Practice Direction, but also the power to overrule/distinguish or disapprove any precedent from a lower court. Stronger answers were able to support their explanation with examples such as **Herrington** or more recently **Hoare** when dealing with the Practice Statement.

For the Court of Appeal, this could have included the power to overrule, distinguish or disapprove any precedent from a lower court (except for Supreme Court/House of Lords), in civil cases by using **Young v Bristol Aeroplane**; in criminal cases to avoid injustice. Again credit was given for explanation of example(s), which were usually seen in stronger answers.

Weaker answers tended to deal with the explanation in general terms, concentrating on distinguishing and overruling, without specific reference to either court. This did receive some credit, especially if examples such as **Merritt** and **Balfour** were explained. Stronger answers usually included something relevant about the powers of both the Supreme Court and the Court of Appeal, and references to case examples.

Question 12

This question required a discussion just of disadvantages of precedent, which could include points such as its undemocratic nature, a case having to come to court, a case having to reach higher courts, there being the possibility of multiple reasons for the decision, the retrospective effect of a decision, the difficulty in some cases of identifying the *ratio*, the large number of precedents and the diversity of law reporting. Most candidates were able to offer some relevant points, but responses tended to be brief, and few were able to develop points or to refer to many case examples. However **R v R** was often used appropriately to illustrate the problem of retrospective effect.

Section B - The Legal System

The Civil Courts and other forms of dispute resolution

This was a very popular topic.

Question 13

This question required a description of dispute resolution by tribunals. This could include qualification of the panel, how tribunals can be required to hear a case – for example statutory or disciplinary, the types of cases heard, the nature of hearings, the process, the outcomes, the possibility of appeals and the enforcement of awards. It was pleasing to see many students were clearly aware of the new tribunal structure. Most candidates were able to say something relevant about tribunals, but significant numbers were confused about their role. Some candidates suggested that they dealt with the same kind of cases as the courts, or that cases progressed from tribunals to courts, while others clearly confused tribunals with arbitration. If however, the facts were known about tribunals and their work, answers to this question could be very good.

Question 14

This question required a brief explanation of the process of conciliation and the process of negotiation. For both of these forms of resolution, there could be reference to who is conducting the resolution, the nature of the process, the type of cases dealt with, possible outcomes, and the possibility of any appeal. Many answers were very general, with their explanations for both conciliation and negotiation being written in similar terms, with limited use of examples. Some candidates still seem to believe negotiation is restricted to minor issues and can only be used in limited numbers of cases.

Question 15

Candidates were required to briefly discuss advantages and disadvantages of using the civil courts to settle a dispute. Sadly, a large number of candidates misread the question and gained few, if any, marks when they responded with an answer on the advantages and disadvantages of using ADR rather than the use of the Civil Court structure. Advantages of using civil courts could include that they resolve the case by an impartial tribunal, there is a public hearing of all evidence which can be tested, there will be legal expertise in the form of the judge and advocates, there will be a certain outcome, and that either party can have a right of appeal. Disadvantages could include the cost of taking an action compounded by the possible award of costs against a losing party, the formality of the process, a possible lack of legal representation, imbalance between parties, the limited efficiency of the process, the difficulty in preserving relationships between the parties, the lack of technical expertise, formality of the procedure and possible attendant publicity. Where answers were directed at the question, there were many examples of creditworthy detailed answers.

The Criminal Courts and lay people

This was by some way the most popular topic on this part of the paper.

Question 16

This question required an outline of the qualifications required to be appointed as a lay magistrate and a brief explanation of the training a lay magistrate has to undergo after appointment. The outline of qualifications could have included reference to age, possible disqualifications and suggested key (personal) qualities. If reference was made to the need for balance on the bench or geographical limitations, this could enhance the answer.

For training, this could include reference to the responsibilities of the Judicial Studies Board and court clerk, initial compulsory training, initial mentoring, ongoing training and appraisal. A reference to specialist Chair and panel training for youth courts and family courts could again enhance the answer.

This question tended to have a great deal of irrelevant material included, with many candidates playing safe by writing about the whole selection process for magistrates and not being satisfied with just the qualifications. Detailed accounts of interviews and appointment not linked to qualifications could not be credited.

Some answers tended to be well developed on one of the aspects, with qualifications and qualities often being stronger than training. However, there were also some excellent responses to the training element.

Question 17

This question required a description of the role of the jury in a criminal trial which, could include them listening to the evidence and advocates' submissions, listening to judge's summing up of evidence and legal directions, having a secret discussion, unanimous and majority verdicts, and the public announcement of verdict. The selection and vetting of juries was often seen, which could receive no credit. Most candidates were able to include some detail, but a number of answers lacked any detail and surprisingly few candidates were able to identify the statutory authority for majority verdicts.

Question 18

This question required a discussion of disadvantages of the use of jurors, which could include perverse verdicts, possible bias, selection issues, influence, media pressure and complexity of issues, with cases to illustrate.

Some candidates dealt either wholly or partly with advantages, which could receive no credit. Nevertheless, there were some excellent answers to this debate question with good supportive evidence with cases such as *Ponting*, *Kronlid*, and *West* often appearing.

The Legal Profession and other sources of advice, and funding

Question 19

In this question, candidates had to describe the process of qualifying either as a solicitor or as a barrister.

The qualifying process of solicitors could include reference to degree level entry, the taking of CPE or Diploma for non-law graduates, possible reference to the Legal Executive route, the LPC, training contracts, membership of Law Society and finally application to be called to roll of solicitors.

The description of the qualifying process of barristers could include reference to degree level entry, the taking of CPE or GDL for non law graduates, the specialist BVC/BPTC course, enrolling with the Bar Council and Inns of Court, residential training weekends which are a replacement for dining, pupillage, call to the Bar, and a possible reference to finding a place in chambers. Most candidates dealt with the qualification of barristers rather than solicitors, but there were some very good detailed answers whichever option was chosen.

Question 20

In this question it was said that Sian had been badly injured in a road accident and wanted to claim compensation. Candidates were required to outline where she could get advice about a

possible claim and how she could pay for bringing such a claim. Candidates needed to understand that there were two distinct parts to the question – sources of advice for a compensation claim and then methods of payment. Possible sources of advice could include reference to solicitors, the Community Legal Service, CAB, claims companies, the internet, trade unions, insurance companies and motoring organisations.

How a claim could be paid for (or financed) could include through Legal Help, private funding, 'no win-no fee' conditional fees, via insurance policies or union membership. Also there might be Legal Aid (Representation) in certain very limited cases.

Some candidates had difficulty separating the two parts of this question and offered comments about advice and funding together. This did not stop them achieving good marks as long as they were able to clearly identify where the advice was coming from and how a claim might be funded. Most candidates had some understanding of relevant sources of advice, but answers on funding were less confident.

Question 21

In this question, candidates were required to discuss briefly advantages and disadvantages of two possible methods of funding a civil court claim.

Points to be made could be:

- For private funding – advantages could include allowing choice of representative, the choice of how much to spend. Disadvantages could include general expense, including issues such as the rule of the loser paying the winner's costs, the difficulty of estimating total costs, the need for experts to be paid, the possible financial imbalance between parties.
- For 'no win-no fee' – advantages could include allowing claims from those who could not afford court action or would not qualify for legal aid. Disadvantages could include the cost of insurance policies required for 'no win-no fee' cases, the threshold test for 'no win-no fee' cases, the availability of types of cases and lawyers prepared to work under the scheme.
- For Legal Help/Representation – advantages could include allowing advice for those of limited means. Disadvantages could include the limited availability of state funding and the low qualifying threshold for this form of help.
- Funding provided by insurance or union – advantages could include allowing members/policyholders to claim, the low threshold qualification and no deductions likely from award. Disadvantages could include the need to be a member/policyholder to qualify, the union/insurance company could decide to settle for a lower amount and the higher cost of future membership/insurance.

The direction to discuss the advantages and disadvantages of **two** of the methods of funding needed to be noted. Sometimes candidates wasted time by assessing more than two methods of funding. A few candidates got very confused about this question, writing about the advantages and disadvantages of the civil courts. However most candidates were able to write effectively about two sources of funding, with relevant advantages and disadvantages being suggested.

The Judiciary

Very few candidates attempted this topic. Answers showed that the topic was either well known or that the candidate was able to communicate very little information.

Question 22

This question required a description of how judges are trained for their work. This could include the provision of initial practical training by Judicial Studies Board on how to run a court, sitting with experienced judges and visits, annual training and induction courses when receiving new responsibilities, mentoring scheme.

This question often produced some very generalised answers, with few candidates able to offer detailed responses.

Question 23

This question required an explanation of the role of the judge in a civil negligence claim and could include dealing with pre-trial issues, such as tracking, acting as trial manager, ruling on legal issues during trial, deciding liability, deciding compensation or other remedy with a possible reference to appeals

Some fairly good answers were seen, but candidates often wasted a lot of time talking about occasions in the civil courts when a jury might be present. Some candidates had not appreciated that it was the role of a judge in a civil case for damages that needed to be commented upon. This might be answered in a limited, generalised way, with little offered beyond the role of judges in deciding the case and awarding compensation.

Question 24

This question required a discussion of the importance of judicial independence, which could include public confidence in judiciary, upholding the Rule of Law, decision making free of pressure, ability to hear cases of judicial review which might involve the government. It was most evident in answers to this question that candidates either knew the material and were able to tackle this question very effectively or knew very little and answers were thus very superficial.

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>.