



**General Certificate of Education (A-level)
June 2011**

Law

LAW01

(Specification 2160)

Unit 1: Law Making and the Legal System

Report on the Examination

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Unit 1 (LAW01) June 2011 Examiners report

General

Candidates from a centre tended to focus on particular topics, and as a result many answers had uniformity of content and in the order in which points and information were introduced. The great majority of candidates attempted two questions from Section A and one from Section B. All questions in Section A attracted significant numbers of answers, with the delegated legislation questions proving the most popular. In Section B, the questions on criminal courts and lay persons were overwhelmingly the most popular, but the civil courts questions were attempted by a number of students.

SECTION A

PARLIAMENTARY LAW MAKING

Question 1

In question 01, candidates were asked to describe any one influence operating on Parliament in the law-making process. Influences that could have been covered included the Law Commission, the media, pressure groups and political influences. In relation to the Law Commission, this could have covered who can sit on it, how it works in investigating issues, its role in codifying and consolidating areas of law, and its role in recommending repeals of old law. Example(s) of its work in any of these areas would have enhanced the description. For pressure groups, answers could have included a general description of the meaning of pressure groups, how and when they can influence, who they can influence, the effect of their influence, and example(s) of their campaigns and work. Candidates often cited Snowdrop, Fathers4Justice, Greenpeace and the hunting protests, along with reference to recent protests.

The media could include TV and radio, the printed media such as newspapers and magazines, and other media such as the internet. Answers could include how and when the media can influence, who they can influence, the effect of their influence and example(s) of their campaigns and work.

Political influence could include the influence of different political parties, a possible reference to European Union ideas and example(s) of any such influences.

The topics of pressure groups and the media tended to be the most popular. Many answers focussed on describing the work of pressure groups and the media without indicating how they have influenced: further, references to influence tended to refer to influence over government, which was not the point of the question. Some candidates tended to merge pressure groups and the media together, which led to some confusion about which influence was being discussed. But there were many good answers, the best of which were able to show the effect of the influence on actual legislation.

Those who covered the Law Commission tended to address fully and accurately the question, both to describe its work and to consider how it has influenced Parliament.

Question 2

In question 02, candidates were required to describe the law-making procedure in Parliament. This description could have covered the procedure in the House of Commons

which included the drafting and introduction of a bill, the order of readings and an outline of process at each stage with the possible reference to public and private members' bills. Following this, there could have been a description of the procedure in House of Lords which could have included how bills are introduced, the order of readings, a possible reference to different forms of bills, the amending role of the upper House, the ping pong procedure in conjunction with the House of Commons, the effect of the *Parliament Acts 1911 and 1949*, and the constitutional role of the Queen and the effect of Royal Assent. Many answers accurately dealt with the procedure in both Houses. However, many answers considered at some length the making and effect of green and white papers, which could not be credited. Reference to types of bills could, however, gain credit if it was shown to have an impact on the process, in other words which House and by whom they could be introduced.

Question 3

In question 03, candidates were required to discuss briefly advantages and disadvantages of the parliamentary law making procedure. Advantages could have covered points such as the democratic nature of the process, the thorough discussion of proposals in both Houses, the introduction of a proposed law after a detailed inquiry or Law Commission report, the giving effect to election manifesto commitments, the open process, the possibility of making amendments, thorough scrutiny of proposals and the supremacy of Parliamentary law over other forms of law.

Disadvantages could have covered points such as the delay in dealing with issues, the possibility of political influences bringing about the law rather than genuine debate, the non-democratic nature of the House of Lords and the Queen being involved in the process, the complex language in a bill, the piecemeal development of laws, the need to read more than one document to find the law on a relevant topic, and the compromise nature of process between Commons and Lords. Most answers found something to say about both advantages and disadvantages, though weaker answers tended to make limited statements without supporting detail. Some answers, however, focused exclusively on either advantages or disadvantages, rather than covering both. The most popular arguments related to the fact that the Commons are elected and the Lords are not, but stronger answers were able to make the point that the Lords could be seen as both an advantage and a disadvantage and, equally, that the need to remain popular in order to win elections could also be argued both ways.

DELEGATED LEGISLATION

This was the most popular topic in this section.

Question 4

In question 04, candidates were asked to outline two different forms of delegated legislation. Forms of delegated legislation could be statutory instruments, by-laws or orders in council. For statutory instruments, the outline could have included that they are laws made by government ministers with delegated powers under authority of a piece of primary legislation, that ministers consult, draft and lay the law before Parliament, that they are often used as commencement orders. Example(s) of statutory instruments would have enhanced the outline. An outline of by-laws could have included how and when made, by a local authority and/or other bodies. An example often used was the no smoking rule on London underground. An outline of orders in Council could include how and when made by Privy Council and briefly who sits on this Council. Again, example(s) of orders would have enhanced the outline. An example often seen was reference to orders made after the 9/11 terrorist attacks and the foot and mouth outbreaks.

Stronger answers gave detailed description of the chosen forms and supported the description with relevant examples: some answers gave detailed reference to relevant enabling Acts. As has been stated in previous reports, many answers which dealt with by-laws referred to the *Dogs Fouling of Land Act* or its successor, as being a form of delegated legislation. What was needed was reference to by-laws made under the authority of this Act.

Question 5

Question 05 required candidates to describe parliamentary controls on delegated legislation. This could have included coverage of possible limits set in the Parent Act and/or the repealing of primary legislation, the affirmative resolution procedure, the alternative negative resolution procedure, and the role of the scrutiny committee. Stronger answers were able to describe each of these procedures accurately. A significant number of candidates confused parliamentary and judicial controls and many answers referred to a parliamentary procedure checking the legislation for *ultra vires* and other judicial controls. Significant numbers of candidates either did not attempt this answer or wrote very little. This was surprising as candidates who had looked at previous papers would have seen that controls on delegated legislation feature regularly.

Question 6

Question 06 required a discussion of either advantages or disadvantages of delegated legislation as a form of law making. The discussion of advantages could have made points relating to the speed of making the legislation, the expertise that may have been involved, completing the detail of a framework Act, that some form of control of the legislation is possible, and that some form of democracy is involved as the laws are made and/or approved by members of the House of Commons.

The discussion of disadvantages could have included its undemocratic nature as laws may be made by unelected civil servants, the volume of particularly statutory instruments each year and the consequent lack of publicity, the need for control of all forms of delegated legislation especially those delegated powers to impose tax (such as through the budget), the limited scrutiny and control of Executive power, and the length and expense of applying for judicial review.

Many answers were able to make several relevant points from either of the options: stronger answers supported their points by reference to a specific example of a form of delegated legislation. Some candidates misread the question and covered both advantages and disadvantages: the stronger discussion was credited in this case.

STATUTORY INTERPRETATION

Question 7

In question 07, candidates were asked to describe briefly what is meant by two of the rules or aids of statutory interpretation. The rules of language could have included:

- the *ejusdem generis* rule - where general words follow specific words, with reference to a case example such as ***Powell v Kempton Park Racecourse***. Many examples just referred to an example such as 'cats, dogs and other animals', though stronger answers could have used this example and a case example.
- the *noscitur* rule – the meaning of a word to be found from the context and an example such as *the Inhabitants of Sedgley* case.

- the *expressio* rule - expression of one thing implies exclusion of another, with an example.

The description of external aids could have included reference to documents outside the Act such as dictionaries, external treaties, reports on which Act is based such as Law Commission reports, the Interpretation Act and Hansard, with possible a example of when it has been used.

The description of internal aids could have included reference to long and short titles of an Act, the preamble, definitions, schedules and any interpretation section. Again, an example would have enhanced the answer.

All three options seemed to receive equal coverage. There were some very good answers, especially when supported with good examples.

Question 8

In question 08, candidates were asked to describe **either** the literal rule **or** the mischief rule. A description of the literal rule could have included the meaning of the rule with cases and or example(s) to illustrate. Examples often seen included ***Whiteley v Chappell***, ***LSNER v Berriman*** and ***Fisher v Bell***. A description of the mischief rule could again describe the meaning of the rule, with a possible reference to Heydon's case, and with reference to a case example such as ***Smith v Hughes***, though the ***RCN v DHSS*** case was often referred to.

The literal rule was the more popular choice, but few candidates seemed able to write a really full answer, with many being content with a brief description and one case example: a sound answer for whichever rule was chosen would have covered one or more cases and shown how the rule was used by the judge when arriving at the result.

Question 9

In question 09, candidates were asked to discuss briefly the advantages **and** disadvantages of the rule that had been described in the previous question.

Advantages of the literal rule could include that judges are applying the will of Parliament and the rule is therefore democratic; it is predictable and certain so that lawyers can appropriately advise their clients.

Disadvantages of the literal rule could include that it is rigid; a bad precedent can be set; absurd or unfair results can be arrived at, as in ***Berriman***; the rule cannot be used if words to be interpreted are not in the Act or words are capable of more than one meaning; there is an assumption that the Act is perfectly written; there may be a possible need for Parliament to rectify error following the case, as in ***Fisher v Bell***; there is an assumption that Parliament meant the result.

Advantages of the mischief rule could include avoidance of absurd and unjust outcomes of the literal rule and its flexibility, perhaps using examples of literal rule cases. Disadvantages of the mischief rule could include the limitations on its use; that it means judges are making law which is not supposed to be their role; and that it may be difficult to find the mischief.

Answers tended to vary: stronger answers made relevant points and supported them with a relevant case; weaker answers tended to be a little simplistic with few references to judicial comments, or only covering advantages or disadvantages to the rule.

JUDICIAL PRECEDENT

Question 10

In question 10, candidates were asked to explain briefly the meaning of *ratio decidendi* and *obiter dicta* in relation to judicial precedent. The brief explanation of *ratio decidendi* could include coverage of the meaning of the term, that it is the binding part of the decision, which has to be followed by other judges. Candidates were expected to use cases or examples to support the explanation.

For *obiter dicta*, again, it could have included the meaning of the term, that it is the non-binding part of the decision which does not have to be followed by other judges, that it may be persuasive: cases or examples could have been used in support.

The majority of answers addressed the question demands, though some candidates tended to explain other areas of precedent such as hierarchy of the courts and law reporting, which could not receive credit. Most candidates used at least one example of case law to illustrate both *ratio* and *obiter*. ***Donoghue v Stevenson*** was often used with ***Howe and Gotts*** used by a good number of candidates. Weaker answers tended to give brief explanations, offering little more than a simple one-sentence description of each element and no cases or examples.

Question 11

For question 11, candidates were asked to explain how judges in an appeal court (**either** the Supreme Court **or** the Court of Appeal) can avoid following precedent. Ways of avoiding precedent could include:

- for the Supreme Court (House of Lords), using 1966 Practice Direction or power to overrule/distinguish or disapprove any precedent from a lower court, explanation of example(s)
- for the Court of Appeal, having the power to overrule, distinguish or disapprove any precedent from a lower court (except for House of Lords), in civil cases by referring to ***Young v Bristol Aeroplane***; in criminal cases to avoid injustice, explanation of example(s).

Many answers did not directly address the question as they dealt with both the Supreme Court and the Court of Appeal avoiding precedent. For the Supreme Court, ***Herrington*** and ***Shivpuri*** were often used to illustrate the 1966 Practice Statement, though ***A v Hoare*** was sometimes seen. For the Court of Appeal, the principles of ***Young v Bristol Aeroplane*** were often accurately set out along with the rules used by the criminal division. Few cases were used to support these principles. Rather surprisingly, greater concentration was often given to explanation of distinguishing, reversing, and over-ruling supported by case law. Many candidates explained these rules without specific reference to the courts, which received less credit. Often, case examples resulted in a confusion of the court being discussed: for example, ***Merritt*** and ***Balfour*** were often attributed to the Supreme Court.

Question 12

In question 12, candidates were required to discuss the advantages of the use of judicial precedent. This discussion could have included the flexibility of precedent, that it is dealing with real cases, that decisions provide detailed rules for later cases, that it is a just system of law making, both authoritative and impartial decisions. Cases or examples would have enhanced the discussion.

Most candidates were able to refer to a range of advantages and stronger answers supported their comments with a case or example, often one mentioned in a previous answer, though *R v R* was often used in this discussion. Weaker answers often consisted of general comment with few examples or evidence to support a point.

SECTION B - THE LEGAL SYSTEM

THE CIVIL COURTS AND OTHER FORMS OF DISPUTE RESOLUTION

Question 13

In question 13, candidates were informed that Josh had been badly injured in a road accident and intended to claim compensation for his injuries. Candidates were firstly asked to identify the civil courts (including any appeal courts) in which his claim for compensation could be heard. They were also asked to describe briefly the process of negotiation which could be used as an alternative method of settling his claim.

The first part required an identification of relevant courts which could include the County Court or High Court with possible reference to tracking limits in each court, depending on the amount of the claim. Appeals could be made to the Court of Appeal and Supreme Court with possible reference to grounds of appeal and orders which those appeal courts could make. A brief description of negotiation could include the process, methods and outcomes

Most answers managed to identify relevant courts and the different tracks. However, in some answers there was some confusion on detail of the financial limits of each court and/or the tracks. Some candidates did not relate their answers to Josh's case or only suggested the Small Claims Court, which did not fit with the question. Surprisingly, the Crown Court and Magistrates Court received mention in many answers. Some candidates seemed uncertain how to approach this question and opted for a detailed description of all the civil courts, including the Magistrates Court and all the divisions of the High Court, rather than focusing on the courts that would be relevant to this claim. As a result, some answers were very long with much irrelevant material. In contrast, answers on negotiation were generally brief and very general. Some candidates decided not to deal with the topic at all.

Question 14

In Question 14, candidates were asked to describe **either** the process of arbitration **or** the use of tribunals as methods of dispute resolution.

The description of arbitration could include reference to the qualification of the arbitrator, how arbitration can come about – perhaps from a clause in the agreement – the types of cases dealt with, the nature and process of the hearing, the outcome, the possibility of appeals, the enforcement of award, and examples of the types of cases heard by arbitration.

Alternatively, a description of tribunals could include the qualification of the panel, how tribunals can come about – statutory, disciplinary – and the types of cases dealt with, the nature and process of hearings, outcomes, with possible reference to appeals, the enforcement of awards and perhaps examples of tribunal cases.

Well-prepared candidates handled this question well, whichever option was chosen. It was disappointing to see a number of answers where candidates confused the two methods. It was not uncommon to see answers supposedly about arbitration, but which described aspects of tribunals, while other answers on arbitration seemed to assume that it worked in the same way as conciliation. Stronger answers accurately described the information and

supported it with examples. There appeared to be no real emphasis in coverage towards arbitration or towards tribunals.

Question 15

In question 15, candidates were asked to discuss advantages and disadvantages of **either** the process of arbitration **or** the use of tribunals. A discussion of advantages of arbitration could include speed and informality of dealing with cases, the expertise of the arbitrator, a limited need for legal representation, the effect of an award, the cost compared to court and privacy of hearings.

A discussion of disadvantages of arbitration could include the lack of funding and therefore legal representation, a possible imbalance between parties based on availability of funding, that the availability of the process depends on an agreement, the cost of the arbitrator and limited appeal rights.

A discussion of advantages of tribunals could include reference to any of the following: the expertise of the panel, that reasons are given for decisions, the cost and informality compared to the courts, the limited need for legal representation, the speed and flexibility of hearings, and a possible public forum for airing dispute.

A discussion of disadvantages could include reference to any of the following: influence of the chair, the cost and lack of public funding and representation, any imbalance between the parties, the formality of hearings compared to other ADR methods, limited appeal rights and adverse publicity.

Some candidates surprisingly chose not to discuss the option they had covered in question 14, though, if they adopted this approach, points made were usually valid. Overall, candidates were not able to advance very sophisticated arguments, or to support their points with an example, and some candidates seemed to opt for generic points rather than ones which were specific to their option.

THE CRIMINAL COURTS AND LAY PEOPLE

This was the most popular topic in this section.

Question 16

In question 16, candidates were asked to describe how jurors qualify and are selected for service in a criminal trial. Description of jury qualification and selection could include reference to age limits, selection from electoral register by the Central Summoning Bureau, residence qualifications, reasons for not serving such as disqualification, discharge or deferral, with possible reference to vetting and challenges, and the selection in court. Many answers to this question were of a good standard. Candidates appeared to have prepared this topic thoroughly and addressed issues relevant to the question, the qualification, reasons for not serving, choice of jurors in court and in a good number of answers vetting and challenging. There was some evidence of candidates writing everything they knew about jurors, as some answers covered their work as well as selection, which could not receive credit. Some candidates used pre-Criminal Justice Act 2003 material by referring to categories of people who may not serve: this applied particularly to lawyers and the police. Centres should ensure that their students use current material on topics such as this.

Question 17

In question 17, candidates were asked to explain the work of lay magistrates in the criminal justice system. This explanation of their work could include deciding bail/custody issues, at trial hearing evidence, deciding guilt/innocence, deciding any sentence, with possible reference to referring cases to Crown Court for trial or sentence, issuing warrants, and any Youth Court hearings.

Again, answers tended to be of a very good standard as many candidates accurately explained their work in and out of court. Summary offences, triable either – way offences, relationship with Crown Court jurisdiction, sentencing powers, Youth Court, warrants, bail and the role of the clerk were addressed in most answers. A few candidates were clearly hoping for a question on selection and qualities required of lay magistrates and introduced this material, which could not be credited.

Question 18

In question 18, candidates were asked to discuss **either** advantages **or** disadvantages of using lay magistrates **and** jurors in the criminal justice process.

Advantages could include points such as trial by one's peers, open justice, public confidence, fairness, the limited number of appeals, cost, and reduction of professional involvement. Disadvantages could include points such as perverse verdicts being reached or inconsistent sentencing, feelings of possible bias by the jury or magistrates, the make-up of panel and selection issues, influence within panel, possible media pressure, and complexity of issues, particularly in relation to certain jury trials.

Yet again, many answers were very good with good use of supportive evidence. In order to achieve the highest level marks, answers needed to refer to both jurors and lay magistrates. As a result of similar comments being made in previous reports, it was pleasing to see that most answers covered, and dealt with, points relating to lay magistrates and jurors separately. However, there was a minority of answers that ignored the rubric and considered both advantages and disadvantages. In answers that followed the rubric, there was no significant distinction or quality difference between advantages or disadvantages.

THE LEGAL PROFESSION AND OTHER SOURCES OF ADVICE, AND FUNDING.

Question 19

Question 19, asked candidates to describe briefly any **three** such sources of legal advice and the types of cases they can give advice on, drawn from a list of Citizens Advice Bureaux, Law Centres, trade unions, insurance companies, claims companies and from the internet. Points that could have been made include:

- CAB – charity providing general free legal advice to those living in their area on a range of issues including debt, welfare, housing, employment or immigration problems. They may claim funding from LSC and/or pass the case to more specialist agencies or lawyers.
- Law Centres – often situated in large cities to provide access to legal advice when legal aid is not available; specialists in social welfare issues including immigration and asylum, housing, employment and benefit entitlement. May be partly funded by LSC and may employ lawyers or para-legals who may be specialists in the field; may be able to pursue a case right through to court.

- Trade unions – initial advice on merits of mostly civil claims (but some criminal cases) and employment matters on behalf of their members; may be prepared to fund more specialist advice or taking the case to court if so advised.
- Insurance companies – initial advice on merits of mostly civil claims, provided the nature of the claim is covered by policy conditions to their insured; may be prepared to fund more specialist advice or taking the case to court if so advised. Policies may be taken to cover legal expenses when covering houses, businesses or vehicles.
- Claims companies – dealing with primarily personal injury claims, initial contact made in response to advertising on TV or radio, initial assessment on merit of claim, passing case to lawyers in return for fee.
- Internet – advice open to all on range of (mostly civil) topics, given either by qualified lawyers (often for a fee) or by non-qualified; may provide initial documents and material but may be unable to continue to help if case becomes more complex.

Nearly all candidates who chose this question gave generally good answers with, in stronger cases, good use of examples and detail. However, some answers included other sources of advice such as for the Criminal Defence Service or the Community Legal Service could receive no credit.

Question 20

Question 20 gave candidates a choice of explaining either how a solicitor trains and qualifies or how a barrister trains and qualifies. The explanation of the solicitor route could have covered possible degree entry, the follow-up courses of CPE or Diploma for non-law degree candidates, possible LPC, training contract, membership of Law Society, application to be called to roll of solicitors. Credit was also given to the alternative Legal Executive route. The explanation of the qualifying process of a barrister could have included the need for degree entry, the need for CPE/GDL courses for non-law degree, the BVC/BPTC course, enrolling with Bar Council and Inns of Court, later residential training weekends (which are replacements for dining), pupillage, call to Bar, possible reference to finding place in chambers.

Greater credit was given to candidates who gave details of the steps, rather than just to provide a list of steps. Generally, this was a well-answered question with many candidates achieving high marks. There appeared to be little difference in the quality of explanation of training and qualification of either a solicitor or barrister.

Question 21

In question 21, candidates were asked to compare and contrast the work of solicitors and barristers. This was intended to be more than a description of their work. One approach for this comparison and contrast could have been based on solicitor's work which could make reference to matters such as the negotiation of disputes on behalf of clients, giving initial advice on contentious work when assessing merits of claim, preparation of claim, obtaining evidence, possible advocacy with increased right of audience; it could also have covered advice on non-contentious work in areas such as conveyancing, probate, family and commercial work; also there is the organisational spread from the specialisation of city firms to sole practitioners. Alternatively greater emphasis could have been given to barristers' work which could have included the giving of an initial legal opinion, preparing specialist documents, the advocacy in court, advice on possible appeals and the presentation of appeal.

Most candidates who attempted this question had some understanding of the differences between the work of the two branches of the profession, the most obvious being the greater range of work – contentious and non-contentious – generally carried out by solicitors. Stronger answers were able to compare and contrast and introduce the similarities. Some weaker responses simply described what each branch of the profession did without attempting a comparison.

THE JUDICIARY

As in previous sessions, this topic was the least popular in this section, though there was more evidence that those candidates attempting these questions were more familiar with the material and many answers were accurate and detailed and showed good understanding.

Question 22

In question 22, candidates were asked to explain how judges are selected and appointed. This could have covered the work of the Judicial Appointments Commission, the statutory legal qualifications of prospective judges, the making of an application in response to an advert, the taking of references, interviews, consultation and eventual appointment by the Ministry of Justice or the Monarch, depending on the status of the judge.

Answers to this question were variable. It was evident that candidates either knew the material or did not know the material. Stronger answers were detailed, especially on the statutory qualifications, and showed evidence of good preparation.

Question 23

In question 23, candidates were asked to describe the work of a judge in a Crown Court trial. This could have covered the making of pre-trial directions at administrative hearings, the swearing in of the jury and keeping order in the course of a trial, rulings on law, directing the jury on the relevant law and evidence, passing sentence following a guilty verdict or a plea of guilty.

This question was generally well answered and candidates were usually able to identify relevant aspects of a judge's work in court, perhaps showing the benefit of observation on a visit or during work experience.

Question 24

In question 24, candidates were asked to discuss the importance of judicial independence. This could have covered points such as public confidence in the judiciary in both civil and criminal cases, that judges are in post to uphold the Rule of Law and make decisions free of pressure, particularly when they hear cases of judicial review involving the government and government agencies. Cases or examples illustrating these type of cases would have enhanced the answer.

Weaker answers relied on general comment, paying little regard to the detailed points raised in the potential content. However, there were some references to separation of powers theory which gained some credit. Stronger answers were able to make some detailed points and to illustrate their answers with good evidence.

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>.

Converting Marks into UMS marks

Convert raw marks into marks on the Uniform Mark Scale (UMS) by using the link below.

UMS conversion calculator www.aqa.org.uk/umsconversion