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Examiners' Report

Summer 2012

GCE Law

Paper 9345/01

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A LEVEL LAW: JUNE 2012

EXAMINER'S REPORT

General Comments.

Candidates who entered the 2012 A Level Law examination produced answers of a comparable standard to those who sat the examination in previous years, but there was a distinct improvement in the quality of Paper Two answers. There were some excellent centres which produced candidates who achieved high grades on both papers, and it was pleasing to observe that comments made in earlier years by the examiners had been noted, resulting in a steady improvement in the standard of work offered by candidates. In general, many students had clearly worked hard to absorb details of the law across the entire breadth of the syllabus they had selected, though the knowledge gained in basic principles for Paper One was seldom transferred to Paper Two. Despite this, some well-reasoned arguments were produced, supported by relevant authorities drawn from cases and statutes. Although some candidates tended to write standardised answers, reproducing all they knew about the general area of law under consideration, this approach was no more widespread than in previous years. This tendency stems from lack of confidence on the part of candidates who have spent considerable time learning the law, but lack sufficient belief in their own ability to apply it adequately. Answers based on a "write all you know" approach can earn only a restricted range of marks, and examiners advise candidates to focus strongly on the terms of each question in order to ensure that they answer the particular question that has been asked. It is for the candidate to form and develop the connections required to make the answers relevant, and students should be encouraged by their teachers to read the questions carefully, to assess what the questions demand, to plan their answers meticulously, and write responses which demonstrate that they have selected law which is relevant to the question, with appropriate illustrations and examples.

There are some candidates who still attempt to answer questions without supporting and illustrating them with appropriate legal authority. However, most candidates were able to use legal authorities to some degree, and better candidates examined the cases in depth. Coupled with a clear demonstration of ability to appraise and criticise the application of legal principles, the use of authorities can yield some excellent answers.

Answering only three questions can result in disaster, even for candidates who write three good answers, as this almost inevitably means a lower grade overall. Consistency across both papers is

essential if candidates are to achieve a high grade, and they are advised to attempt all four questions as instructed on both papers. Although the examiners ensure that candidates are rewarded for what they have shown they can do, rather than penalising them for omissions, it is impossible to award marks for a question that has not been answered at all.

For Paper One, successful candidates demonstrated a very good appreciation of the role and function of law in society, an understanding of legal classification, and evidence of critical awareness of controversial issues in law and law reform. For Paper Two, better candidates showed a clear grasp of how to analyse legal problems, and real ability to apply rules and use authorities. Clarity of presentation, coupled with a good structure for each answer, and detailed discussion of the legal rules relevant to the questions are all the hallmarks of good answers.

PART I

Q1 The question on the enforcement of morals attracted many stock answers, ranging across a number of theories about the nature of the connection between law and morality. Unfortunately accounts of the differences between natural law and positivism tended to dominate responses, pushing the more specifically relevant material on the Hart/Devlin debate and the celebrated views of Mill on the limits of the authority of the state over the individual into the background. Ironically in the past questions about natural law and positivism have been answered obliquely at best by reference to the enforcement of morals debate! There was some good use of case law to illustrate different philosophical standpoints, but often answers were uncoordinated.

Q2 The rule of law and its virtues or vices was not usually covered impressively by those who tackled the question. Some answers showed no awareness of Dicey and subsequent authors, and were preoccupied with general propositions about law and order.

Q3 The potential of equity and the subsequent history of equity were generally well described and evaluated, and the depth of detailed exposition was often impressive, including reference to various statutes and Dickens' views in Bleak House. What differentiated the candidates apart from their willingness to discuss potential specifically was the facility for elucidating relatively complex interventions as in trusts and mortgages rather than reciting labels, and the capacity to produce economical summaries of the significance of cases. For some reason there was a propensity with many to reach further back than the birth of equity to the nature of customary law.

Q4 There were some gratifyingly extensive and detailed answers to this question, in which knowledge of case law and of the development of doctrine was combined with awareness of the underpinning moral and economic arguments. At the other end of the spectrum some candidates confused strict liability with draconian punishment.

Q5 Candidates on the whole seemed less than prepared to answer a question about judicial interpretive obligations in the Human Rights Act, just as they showed some reluctance to explore the issue of substantive impact. This phenomenon is largely explained by stock answer syndrome, where there could be detailed exposition on, say case law on the application of s3 of the Act, but also glaring examples of prepreparation followed through ill-advisedly, as when candidates bowdlerised the view that Ghaidan was an act of "vandalism" and turned vandalism into another case. So some detailed knowledge of

the terms of the Act or case law was often not accompanied by the ability to mould the “raw” knowledge into a focused answer.

PART II

Q6 Statutory interpretation, because of the inherently wide range of rules, maxims and principles involved, lends itself to the stock answer, and most candidates succumbed to the temptation to show knowledge that was not specifically requested ; this was ill-advised particularly when it came to the Latin maxims, which were often garbled. The better answers combined detailed illustration of, say, the literal rule with an ability to comment on the origins and merits of the purposive approach. The weaker answers tapered off at the top end of the satisfactory mark range with nothing but description and no evaluation as required by the question.

Q7 The standard reached in answering this question was generally high, with a combination of accurate exposition of the doctrine of precedent at different levels in the hierarchy (please note that the Supreme Court now rules ok) and an awareness of the advantages and disadvantages of strict adherence to precedent. The stronger candidates were also able to range over the mechanisms deployed by judges to avoid awkward precedents (not “precedence”).

Q8 The magistracy was generally well understood and explained, with the better candidates achieving a respectable balance between description and critique. Alternatives to the current system were characteristically well analysed.

Q9 Candidates were usually well versed in the role of the jury, though some focused excessively on describing the eligibility criteria, and not always the most up to date criteria. The stronger candidates showed a clear grasp of a wide range of pros and cons and of enquiries and reports on the jury.

Q10 Although the question was not primarily about the relinquishing of sovereignty and Dicey, many candidates interpreted it in that light. When it came to principles of interpretation it was surprising how few answers showed knowledge of the influence of the teleological approach favoured by the European Court of Justice.

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