Pearson

Examiners' Report
Principal Examiner Feedback

Summer 2017

International Advanced Level
In Law

Paper 1: Underlying Principles of Law and the English Legal System

YLA1_01

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Introduction

This was the first paper of the new specification for IAL Law. The new Paper 1 contains 5 questions of 20 marks each. There is no question choice on the paper, candidates are required to answer all questions. The format of the paper is that the first two questions consist of short to medium response questions, the next two questions consist of multi-part, problem-solving questions and the last question on the paper is a problem-solving question. The paper is worth 50% of the total IAL raw marks. The subject content for the paper is selected from the nature, purpose of and liability in Law, and the sources of English law, its enforcement and administration.
Most candidates attempted all questions, although some candidates omitted to answer questions 4c and 5. This could however have been in some cases, because of time management issues rather than lack of knowledge.
Interpretation of questions and their command words need to be improved upon. Candidates must remember that each part of a question is marked in isolation, so if the correct information for part a of a question is put wrongly in the answer to part b of that question rather than in part a, no marks will be awarded for that information.

General issues

Questions carrying 2 or 4 marks are asking candidates for points based answers which means they could receive a mark for every correct accurate point made in answering the question. Space provided for answers should inform candidates of the brevity of response required. Command words such as 'State', 'Explain', and 'Describe' gain marks for providing knowledge, explanation, or description and providing examples for exemplification of specific legal concepts.
Questions worth 6, 10,12,14 or 20 marks are asking candidates to provide an explanation, assessment, analysis or evaluation of a given legal concept or issue using a combination of appropriate legal knowledge together with an assessment of the issue. Candidates answers are awarded a mark based on the level of response they display.
Questions asking for 'Analyse' required candidates to weigh up a legal issue with accurate knowledge supported by authorities or legal theories and to display developed reasoning and balance. Questions asking for 'Evaluation' additionally required a justified conclusion based on this reasoning and balance.

Question 1a: (4 Marks)

This question is a points-based one where the candidate needs to state 4 main features of judicial precedent for 4 knowledge marks. Many candidates merely stated or attempted to state the relevant Latin phrases, without showing understanding of their meaning. Some learners treated the question as 'Explain the hierarchy of the courts'. Others included responses more suitable for part b of this question.

1 (a) State the main features of judicial precedent.

(4)

(Precedent is followed as for the future decisions to be). The main features of judicial precedent includes to stand by the previous decision, made by the judges in a Higher court. The courts have been set up, given them ranks in accordance to its superiority on lower courts. It helps resolve decision earlier as the courts are binding to its previous decision. So the same case will lead to same decisions.

Judicial Precedent.

↓

Judges bound by their Previous decision of higher courts.

Steir decis = stand by what is written.

Ratio decendi:

Examiner comments. This response was awarded 2 marks as only 2 features have been stated.

Judicial precedents are past cases decided by courts. The gener
ule is stare decisis, i.e., judges must adhere to the ratio decide
of similar cases determined in a court higher than itself in the
hierarchy. Ratio decidendi means the ~~rules directly used~~ Legal
reason for deciding that particular case, while the other parts
of the judgment are called obiter dicta, which means 'thi
things said by the way' of judges. ~~Judicial p~~ This system
is unique to the common law systems, while civil law systems do
not give such importance to precedents. ~~Ho~~ In addition,
judges may choose to follow or not follow a persuasive precedent, whic
may be cases from other jurisdictions or from an inferior court, and ma
even create original precedents if that matter has never been decided
by any court.

e.g., Hill v Baxter.

Examiner comments. This response was awarded 4 marks. Four or more clear features can be seen in the answer.

Examiner tip
Make sure you read and understand the command word in a question and the marks allocated. Check your answer regularly to make sure you stick rigidly to this.

This was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptors.
The command word in this question was 'Explain', which was looking for an extended answer, candidates were required to demonstrate understanding of the ways to avoid following precedent and to add exemplification by providing examples. Candidates' answers often identified reversing, disapproving, distinguishing and overruling, but without case examples, or identified the Practice Direction and perhaps one of the avoiding methods. Some candidates misunderstood the question and based their answers solely on statutory interpretation.
For **level 1** candidates were only able to provide isolated elements of knowledge on methods of avoiding.
For **level 2** candidates provided several elements of knowledge supported by some legal authorities

For **level 3** candidates demonstrated detailed understanding supported by relevant authorities.

A binding precedent refers to a previous court decision ~~if the 2 cases~~ fais the courts are bound to follow, such as a decision of a higher court like European court of justice, Supreme court etc. For instance the European court of justice's decisions are binding on all member states and Uk supreme court's decisions are binding on all ~~me~~ other courts such as court of appeal, High court, crocon court, county courts ~~etc~~ in Uk, Wales and Nothern Ireland. The supreme court judges are noco not bound to follow their own decisions by the practise statement issued by Lord chancellor and lord Gardiner. And the court of Appeal, and high courts are not bound to follow their own decisions ~~by~~ if they meet the certain exceptions ~~for following~~ set out in the case of Young v Bristol Aeroplanes which enable them to avoid following their own previous decisions in certain exceptions set out in the case. And ~~furthermore~~ also courts can use distinguishing which is a tool used by ~~courts~~ judges to avoid following a binding precedent ~~by~~ if ~~distinguishing it on the f~~ the 2 cases raise different legal issues and facts. And the judges can also use reversing (where a higher court ~~overturns~~ in the same case overturns a decision laid down by the lower court) and overruling. (where the higher court in a different later case overturns a decision of a lower court) to avoid following a binding precedent.

(b) Explain how judges can avoid following a binding precedent.

(6)

There are three main tools a judge may utilise to avoid following binding precedent. Firstly, they can distinguish the current case as fundamentally different in terms of fact from the previous case, so they will no longer be bound by the past decision. This is what happened in the case of Merritt v Merritt, in which the previous precedent made in the similar case of Balfour v Balfour was overturned. A judge can also overrule the decision made by a lower court or by their own court in a case. Pepper v Hart saw the House of Lords overrule its own past decision in Davis v Johnson on the use of Hansard in interpreting acts of Parliament. Finally, a judge can reverse the decision made by a lower court on a case on appeal, so it will no longer be binding.

Examiner comments. Both these responses above were awarded 6 marks and are level 3 as they display detailed understanding and authorities. But, the response below was awarded a level 1 mark of 1, as only isolated elements of knowledge are displayed.

(b) Explain how judges can avoid following a binding precedent.

(6)

A binding precedent is when a court is binded with a decision to a court which is higher than its status. Such as, all courts are binded to decisions given by the house of lords, the House of lords is binded to ~~the~~ no other court as it is the highest in status.

Judges can avoid binding precedent by being in a high status court. this nullifying the precedents from the lowes court as they are not bind to them. Or they can request permission from higher officials to give his/her own verdict.

Question 1c: (10 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptors.
The command word in this question was 'Assess', which was looking for an extended answer, weighing up both the advantages and disadvantages of judicial precedent that apply and then an identification of which are the most important or relevant and why.
Many candidates merely gave 2 distinct lists which were often unbalanced and there was no attempt to weigh these up or say what or why one or the other was more important. Some candidates spent too much time explaining Judicial Precedent rather than assessing the advantages and disadvantages of it as asked in the question. Some learners based their whole answer on overruling, disapproving and reversing, repeating a question 1b answer.
For **level 1** candidates gave isolated elements of knowledge, perhaps a couple of advantages like 'provides certainty and saves time'.
For **level 2** candidates demonstrated some understanding and began to make connections.
For **level 3** candidates demonstrated accurate understanding and compared / contrasted and attempted to balance reasoning.
For **level 4** candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations and reasoning.

Judicial precedent can be very useful for judges to arrive at decisions swiftly. Many people believe that Judges do not actually ~~apply~~ make new laws rather just use laws to arrive at decision.

Judicial precedent can be very useful in matters where the Parliament does not have enough time to pass a new a act and judges can act swiftly to provide with new laws. Judicial precedent is necessary as it brings certainty in law and the behaviours of the official's can be predicted, thus the legal advisor can help the client effectively.

Judicial precedent is flexible. If the judge does not agree with the previous decisions the judge has the discretion to deviate from it by using certain tools e.g. distinguishing, overruling or reversing.

Judicial precedent makes sure that judges have to treat the similar cases in the same. It prevents the arbitrary use of powers as judges are not allowed to give decisions because of their personal wills, this shields the people those subject to law from arbitrary use of powers.

This makes sure that justice is restored. The cases with sufficient similarity are treated in every way similarly. This makes sure that Justice is not denied and it is provided to all those coming for it.

However Judicial precedent is a very rigid rule. A Judge in the lower court might not agree with the decisions of the upper court and has to agree with it making law inflexible.

Justice is not provided in the correct way. It does bring certainty in law but justice is denied as two different cases can never be treated in the similar way.

Wrong decisions may be implemented for years unless the upper court in the hierarchy does not depart from it. this makes it difficult that Justice will be provided to the p (Total for Question 1 = 20 marks)

eople.

Judicial precedent although brings certainty in Law but it is a rigid method because judges might have to follow the decisions with which they do not agree.

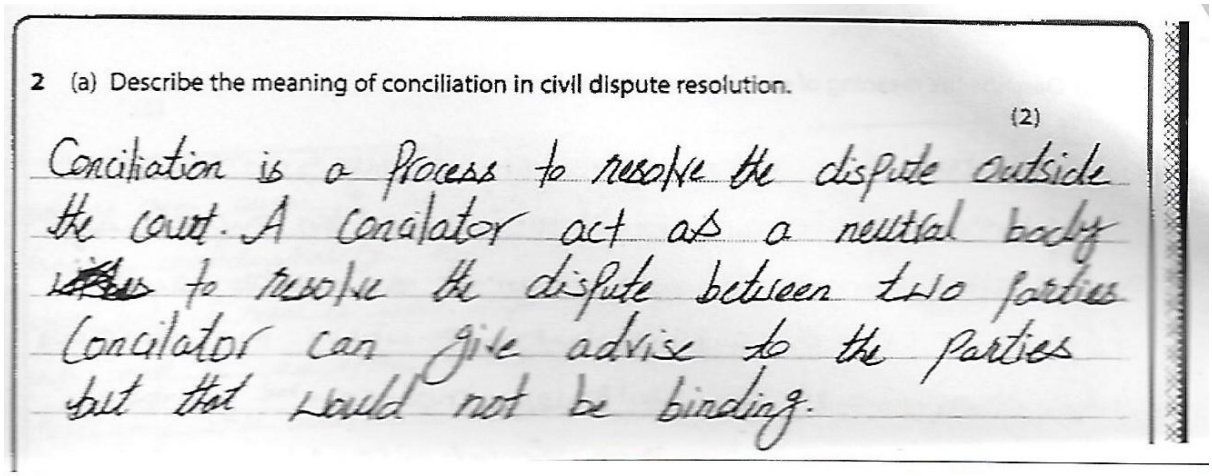
Examiner comments. This response just got into level 4 and was awarded 7 marks. Accurate understanding with balanced reasoning is demonstrated.

Question 2a: (2 Marks)

This question is a points-based one where the candidate needs describe or define what is meant by conciliation and for the application mark the candidate then needs to give an expansion of this, such as when it might be used.

The command word is 'describe' which requires candidates to give a one step, short answer.

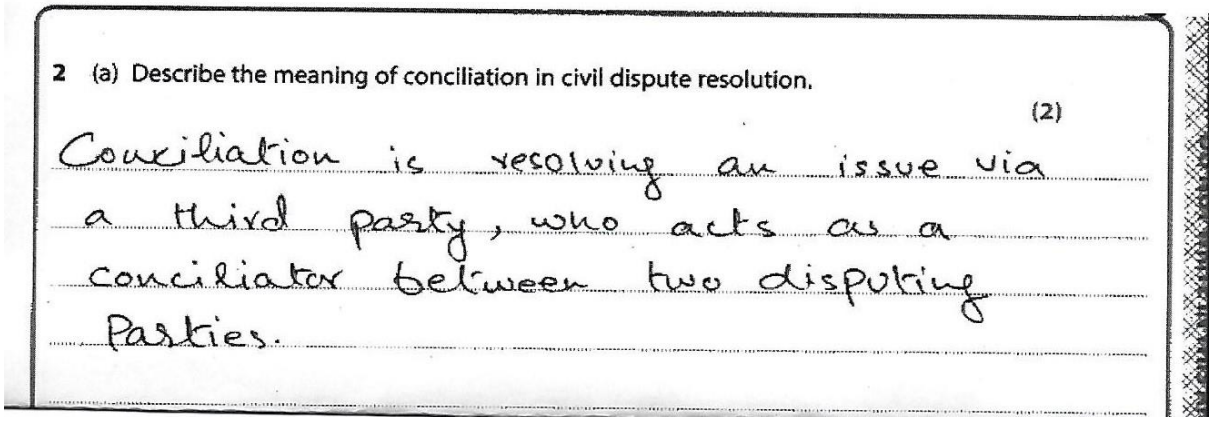
This question was generally done well, although confidentiality, neutrality and non- binding were often omitted.



2 (a) Describe the meaning of conciliation in civil dispute resolution.

(2)

Conciliation is a process to resolve the dispute outside the court. A conciliator act as a neutral body to resolve the dispute between two parties Conciliator can give advise to the parties but that would not be binding.



2 (a) Describe the meaning of conciliation in civil dispute resolution.

(2)

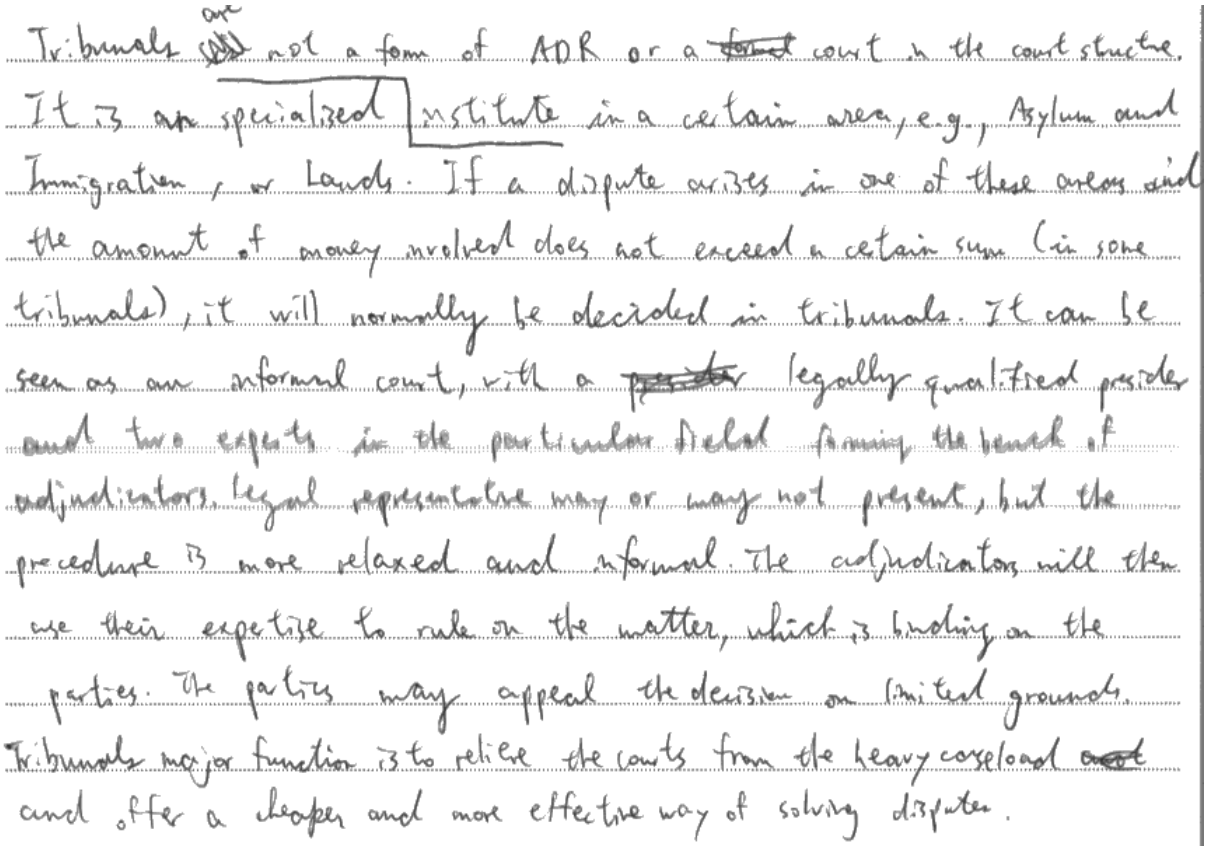
Conciliation is resolving an issue via a third party, who acts as a conciliator between two disputing Parties.

Examiner comments: In the first example above 2 marks were awarded, in the second, 1 mark was awarded.

Examiner tip: see how little extra is needed for full marks.

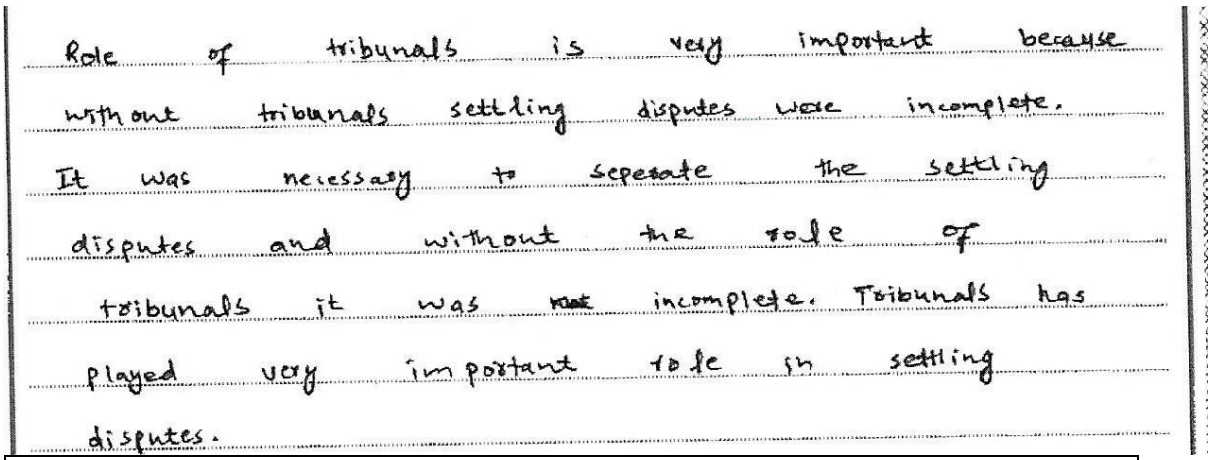
Question 2b: (4 Marks)

The command word is 'explain' which requires candidates to show understanding of the law with linked exemplification, such as an example of where tribunals are used or their composition.
This question is a points-based one where the candidate needs explain what tribunals are and its role for 2 knowledge marks. For the application marks the candidate then needs to give examples, such as where tribunals are used or their composition. Candidates did either very well on this question or very poorly.



Tribunals are not a form of ADR or a court in the court structure. It is a specialized institute in a certain area, e.g., Asylum and Immigration, or Lands. If a dispute arises in one of these areas and the amount of money involved does not exceed a certain sum (in some tribunals), it will normally be decided in tribunals. It can be seen as an informal court, with a legally qualified presider and two experts in the particular field forming the bench of adjudicators. Legal representative may or may not present, but the procedure is more relaxed and informal. The adjudicators will then use their expertise to rule on the matter, which is binding on the parties. The parties may appeal the decision on limited grounds. Tribunals major function is to relieve the courts from the heavy caseload and offer a cheaper and more effective way of solving disputes.

Examiner comments.The answer above scored 4 marks, the answer below scored 0 marks.



Role of tribunals is very important because without tribunals settling disputes were incomplete. It was necessary to seperate the settling disputes and without the role of tribunals it was not incomplete. Tribunals has played very important role in settling disputes.

Examiner tip: The 2nd answer just repeats the question, don't do this.

Question 2c: (14 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.
The command word in this question was 'Evaluate', which was looking for an extended answer, identifying, analysing and concluding on the effectiveness of the different types of civil dispute resolution (CDR).
Answers were expected to include the advantages and disadvantages of all/ some of conciliation, negotiation, mediation, tribunals and the courts, plus ombudsmen. Many answers however just focussed on explaining these methods, without any or very little evaluation.
For **level 1** candidates gave isolated elements of knowledge, of one / two civil dispute resolution methods
For **level 2** candidates demonstrated some understanding and began to make connections with advantages and disadvantages of perhaps 1 type of CDR with the court.
For **level 3** candidates demonstrated accurate understanding and compared / contrasted 2 types of CDR with the courts and attempted to balance reasoning and evaluate with a conclusion.
For **level 4** candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations, reasoning and a sound conclusion.

Civil dispute resolution are the ~~means through~~ collective description of methods of resolving disputes rather than through the normal trial process. They include arbitration where the parties, arbitral tribunal ~~or~~ or judge work in a judicial ~~pat~~ fashion ~~to~~ to ~~and~~ make an award and finalise a dispute, negotiation where the parties without the intervention of a third party seeks a mutually accepted solution., conciliation and mediation where ~~the~~ it inserts an independent third party between the two conflicting parties to either mediate their ~~relationship~~ dispute or reconcile their relationship.

Civil dispute resolution is vital ~~to~~ for resolving disputes, because it allowes ~~the parties to settle their disputes without~~ early settlements of disputes, confidential ~~pablicity~~ parties can be So their reassured about the costs because they are quite cheaper than the court actions and the parties can also maintain a positive relationship with the other party once the dispute is settled.

Negotiation maybe an effective way of resolving disputes because it keeps the dispute to be confidential and there will be no publicity and it ~~directs~~ facilitates communication between parties so they parties can quickly ~~see~~ find an acceptable solution for their problem and it is also much cheaper than court action. ~~The~~ Resolving disputes through arbitration maybe effective because the dispute is handled in a confidential way which protects the parties reputation and also ~~the decision made by the~~ there's a freedom of choice ~~chosen~~ for selecting the

arbitrator and also the place where the case can be heard (hotel room or in the a solicitors office.) and the decision made by the arbitrator can be enforced, and it is binding so the parties can enforce the decisions made in arbitration. Conciliation may ~~also~~ also be effective in Settling disputes because it's a cheap and confidential and allowes early settlement of disputes. Mediation may also be considered as an effective way of resolving disputes because it allowes the parties ~~to~~ to gain a better understanding of the problem and ~~the~~ each other's sides and views by way of private forums and intial joint meeting which will be held during the process.

But however these alternative dispute resolution methods maybe ineffective because they may not ~~provide no~~ ~~get~~ ~~guarantee~~ ensure that the dispute will be settle immediately. If the dispute does not get ~~settle~~ settle through methods such as negotiation then it be a waste of time and effort. And sometimes the weaknesses of parties ~~discussed~~ may be disclosed to the other party during negotiations this will give the other parties and indirect advantage to go to courts and use that evidence against the other party. And arbitration may contain certain problems such as if you disagree with the arbitrator's decision your right to appeal may be limited and it is ~~not~~ an expensive method than courts because you have to pay the cost of the arbitrator (In courts, you do not have to pay the fee of the judge. Conciliation and mediation may also ~~be~~ can be ~~prolong~~ take a long time to settle the dispute and the decisions made or settlements reached cannot be enforced.

But however, despite these limitations these civil dispute resolution methods provide so many benefits to courts and the society as discussed above.

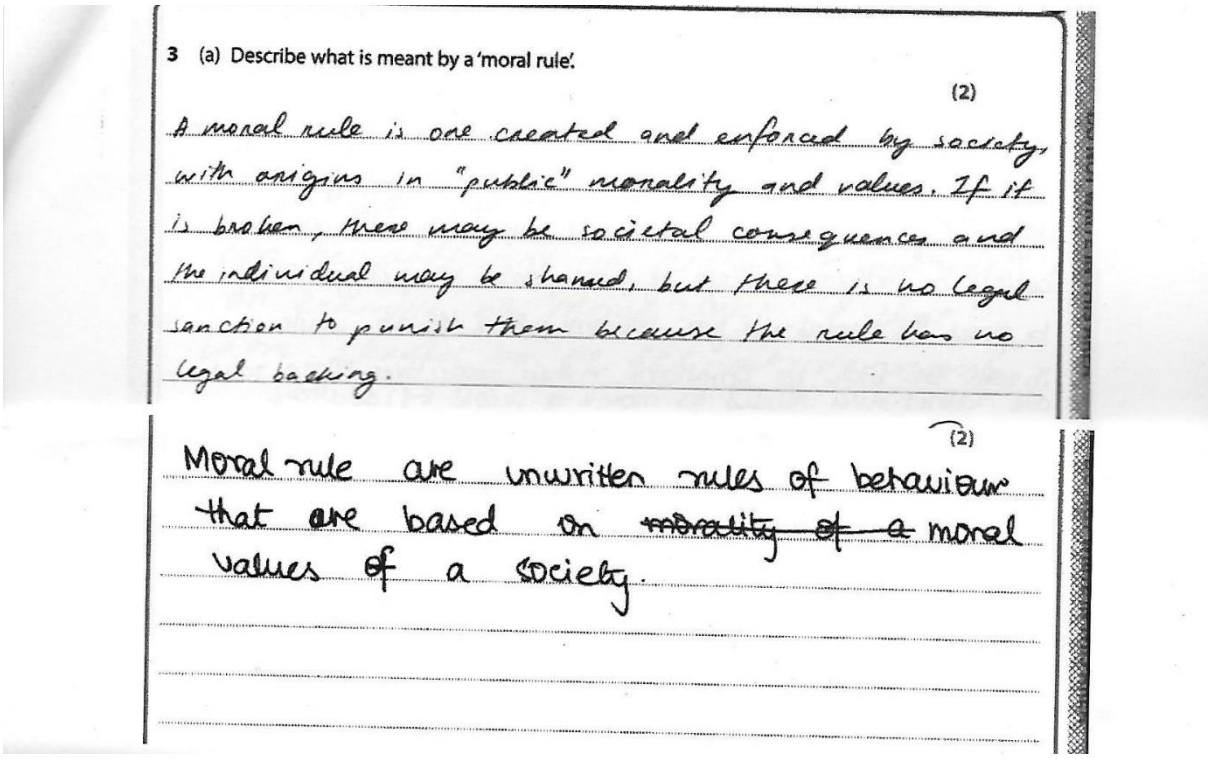
(Total for Question 2 = 20 marks)

8

Examiner comments. This scored 12 marks – The candidate has displayed an accurate and thorough understanding of the different types of CDR and evaluated them with comparisons to the courts together with a brief conclusion to sum up.

Examiner tip
For an evaluate question there needs to be a balance between displaying a thorough understanding and application of the question topic and the need to show analysis and evaluation skills to justify a conclusion.

The command word is 'describe' which requires candidates to paint a picture with words which demonstrates the meaning of a legal term.
This question is a points-based one where the candidate needs to provide an accurate definition for one mark, and then expand on this by giving an example for the other mark.
Most candidates scored at least 1 mark for this question, but many failed to gain the other mark by just defining morality, rather than describing a moral rule, and so omitted the fact that it is not enforced by law, and omitted to give an example.



3 (a) Describe what is meant by a 'moral rule'.

(2)

A moral rule is one created and enforced by society, with origins in "public" morality and values. If it is broken, there may be societal consequences and the individual may be shamed, but there is no legal sanction to punish them because the rule has no legal backing.

(2)

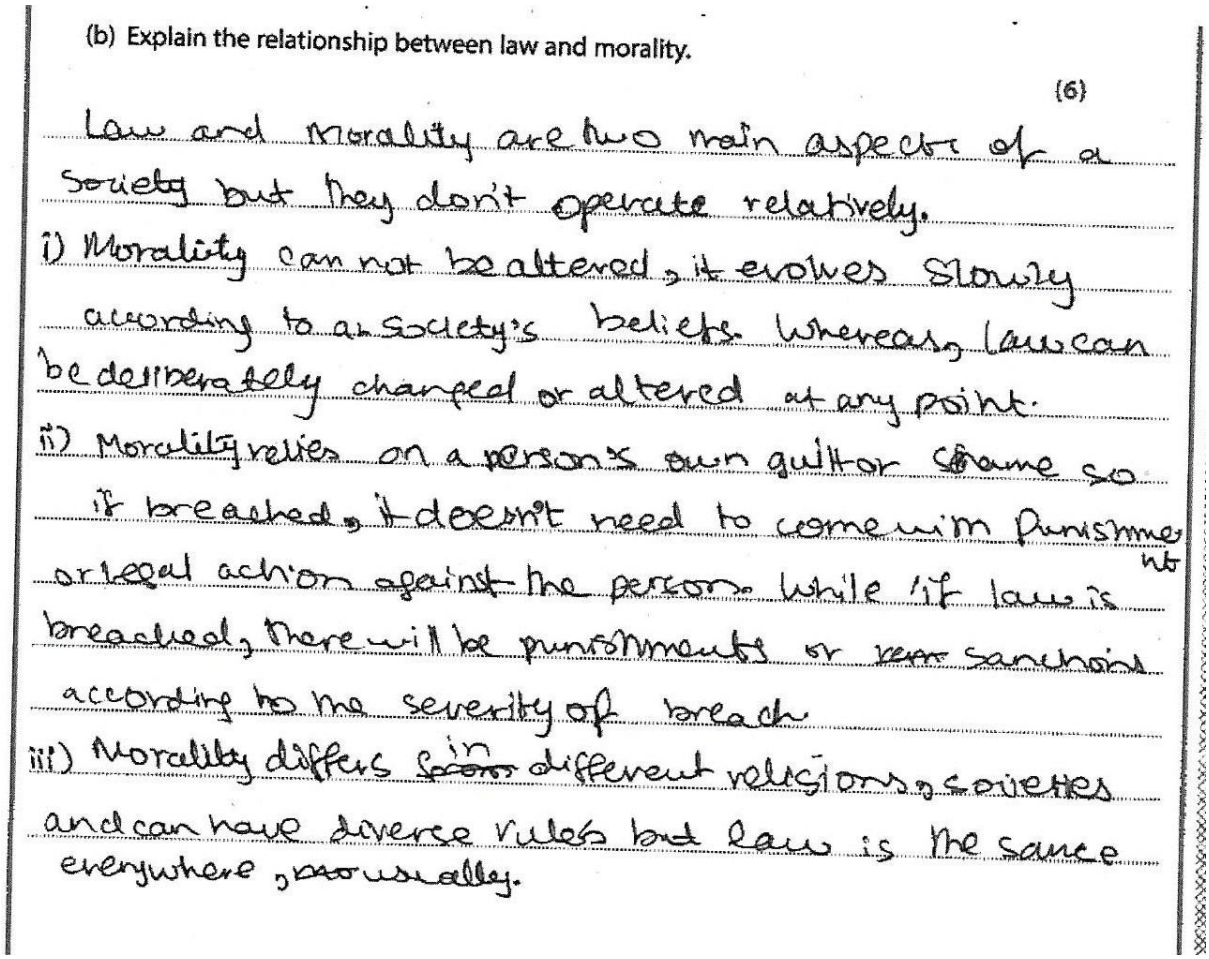
Moral rule are unwritten rules of behaviour that are based on ~~morality of~~ a moral values of a society.

Examiner comments
The top answer scored 2 marks, and the bottom one scored 1 mark.

Examiner tip
A 2 mark describe question requires a brief answer with no more than 2-3 points made to avoid running out of time towards the end of the paper.

Question 3b: (6 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.
The command word in this question was 'Explain', which was looking for a detailed answer, and required a linked justification or exemplification of the relationship between law and morality. It did require authorities. A simple comparison of law and morality only achieved level 1 marks. Those candidates who did refer to theories in their answer often confused Hart and Devlin's views.
Candidates would have done well to read ahead, and look at question 3c, to decide which information to put in part b and which in part c, as some repeated their answers for both, rather than being selective.
For **level 1** candidates were only able to provide isolated elements of knowledge on the relationship between law and morality.
For **level 2** candidates provided several elements of knowledge supported by a few legal authorities or examples and some connections.
For **level 3** candidates demonstrated detailed understanding and balanced exemplification supported by relevant authorities.



(b) Explain the relationship between law and morality.

(6)

Law and morality are two main aspects of a society but they don't operate relatively.

i) Morality can not be altered, it evolves slowly according to a society's beliefs. Whereas, law can be deliberately changed or altered at any point.

ii) Morality relies on a person's own guilt or shame so if breached, it doesn't need to come with punishment or legal action against the person. While if law is breached, there will be punishments or sanctions according to the severity of breach.

iii) Morality differs in different religions, societies and can have diverse rules but law is the same everywhere, universally.

There are ~~two~~ three main theories which deal with the interrelated ness of law and morality. Natural law legal theory, developed by theorists such as Thomas Aquinas, says that law and morality are one and the same. It is derived from a higher power and not human superiors and laws which do not contain morality are invalid and corrupt. Legal positivism takes the opposite stance and says that law has nothing to do with morality. Laws ~~should~~ ~~may~~ have moral roots but they are valid even if they don't, and they are made by the sovereign e.g. Parliament. Jeremy Bentham is a pioneer of both this theory and that of utilitarianism, the theory that only laws which create the greatest good for the greatest number should be made.

Examiner comments: The top answer scored 2 marks, the bottom answer scored 5 marks. The second answer contains theories, whereas in the first answer, there is no theory or authorities.

Examiner tip: Avoid the temptation of writing everything you know about a topic, it wastes time. A candidate who writes only relevant information will save time, have a much clearer answer and is likely to gain more marks.

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.
The command word in this question was 'Evaluate', which was looking for an extended answer with examples, to identify and analyse whether the law can resolve complex moral issues. Candidates were expected to review the statement in the question and draw on evidence and their understanding of the law to justify their argument and come to a conclusion. Candidates needed to weigh up relevant issues and authorities.
Some candidates clearly misunderstood the statement in the question, and took the question to be about sex discrimination. Their answers then focussed on the Sex Discrimination Act, glass ceilings and the minority number of female lawyers and judges.
For **level 1** candidates demonstrated isolated elements of knowledge
For **level 2** candidates demonstrated some understanding and began to apply their knowledge to the question, with perhaps use of authorities, albeit sometimes applied inappropriately.
For **level 3** candidates demonstrated accurate understanding of the question demonstrated accurate understanding supported by relevant

authorities and attempted to balance reasoning and evaluate with a conclusion.
For **level 4** candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations, reasoning and a sound conclusion.

(12)

Many believe that laws and morality are not meant to coincide and are separate entities and should not be allowed to coincide. In the 1950s, there were great debates going on regarding the deterioration of morality among the younger generations. Issues such as drug abuse, homosexuality, prostitution came into discussion. Finally, a Government-commissioned report was launched which went on to find out whether prostitution and homosexuality should be allowed or not. It was titled the 'Wolfenden Report', the results that is. In the report the Commission recommended that they should be legalised with restrictions and people should not interfere in others' public lives. Hart agreed with the report's findings and Devlin disapproved. Thus, started the great Hart-Devlin debate.

Devlin believed in a basic argument of good and evil was necessary to keep the society coherent. Hart believed that issues of moral irrationality should not allow someone to be imposed sanctions upon.

In R Shaw v DPP, Shaw published a magazine called 'Ladies Directory' cataloguing all the sexual practices offered. House of Lords charged him with a conspiracy to corrupt public morals. Thus, it is seen that Devlin's views were supported here.

Again in R v Gibson, where a ~~mother decided to~~ person made art using freeze-dried foetuses of 3-4 weeks month development. Again she was charged for outraging decency and Devlin's views were upheld.

In R v Brown, it is seen that a group of people formed a sort of

social gathering for homosexual and sadomasochistic purposes and all were consenting adults. But again HL charged them with criminal offence of ~~assault~~ assault, and they could not use the defence of consent. This also supports Devlin's views.

In Knuller v DPP, a man posted adverts inviting homosexual purposes from others on his own magazine International Times. Again, Hart's views were supported.

However in Gillick v, a women tried to bring a charge against a medical facility for teaching a girl about sexual ~~lives~~ activities and provided her treatment, even though she was under 16 and had no parental consent. HL held that it was a medical matter and Hart's views were supported.

Again, in case of Re A (Children), a single child who could not have had the chance to live and could cause his other twin to die who could have lived was allowed to be killed. This was on the grounds that child B had a chance of living, if he survived. Wood LJ called it a self-defence case. Brooke LJ also called it a necessity of private defence. Hart's views were supported here.

As we can see, Law can be used to resolve certain complex moral issues

Examiner comments
This answer scored 10 marks – An excellent answer. It covers all the issues in detail with good use of relevant case law and a brief conclusion. The candidate could have been awarded full marks with a sounder conclusion.

Examiner tip
Be as concise as possible and make sure you have addressed every element of the question to gain full marks.

The command word is 'explain' which requires candidates to give brief explanations and examples on the focus of the question. There is no requirement or expectation for candidates to write a lot about a topic. The question is also an 'either' 'or' choice. Therefore, candidates were only expected to write about **either** the European Commission **or** the European Court of Justice. Some candidates ignored instructions and wrote about both. This question is a points-based one where the candidate needs to provide examples of the role for 2 marks and extend this by providing examples for another 2 marks. There was a balanced uptake by candidates on both institutions and candidates displayed good knowledge and understanding. Answers though were often short of examples to gain full marks.

4 As a member of the European Union, the UK currently has to comply with EU laws as well as those laws made in the UK by Parliament and the Courts.

(a) Explain, in this respect, the role of **either** the European Commission **or** the European Court of Justice.

(4)

The European Commission is made up of 28 Commissioners, one for each Member State, who act independently of national origin. They are each responsible for a certain area of EU policy and they review the laws for reform and propose draft legislation to the Council of Ministers. They are also the "guardian" of the Treaties - making sure the provisions are uniformly implemented and reporting Member States in violation to the ECJ. Finally, they control the administrative functions and budget of the European Union.

The European Court of Justice is the highest court ~~that can~~ and it has ~~The European Comission is a~~ three main functions. ~~made by the council.~~ Firstly, under Article 267, it hears preliminary rulings or referrals by member states as seen in van Duyn vs. Home Office. Secondly, they ~~ensure that~~ decide whether the EU law is obeyed by states, under Article 19 when issues are brought to against states by the European Commission as seen in the case of ~~Re~~ Tachograph : the Commission Vs. UK. Finally, they sit as a court of first instance for some cases such as those involving employment disputes.

Examiner comments
These two answers for 4a both scored full marks.

Examiner tip
Read the question carefully. It can save you time and gain marks.

Question 4b: (6 marks)

This question was marked using a level- of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.
The command word in this question was 'Analyse', which was looking for a detailed answer with examples. Candidates were expected to examine in detail and break down into individual components methodically the differences between regulations and directives. There was no need for candidates to provide a conclusion.
Candidates generally understood the differences, and this part of the question was answered very well. Although there was quite a lot of confusion over direct applicability and vertical and horizontal effect.
For **level 1** candidates were only able to provide isolated elements of knowledge on the differences.
For **level 2** candidates provided several elements of knowledge supported by a few legal authorities or examples.
For **level 3** candidates demonstrated detailed understanding and balanced exemplification supported by relevant examples and authorities.

(b) Analyse, using examples, the differences between 'Regulations' and 'Directives'.

(6)

Regulations are the nearest form of EU law that comes to an act of parliament and they become part of the member countries law once they come into force. Whereas directives set out broader objectives and requires the member states to ~~give~~ make their own delegated legislation to give effect ~~into~~ them in during a specified time limit. A regulation ~~come into force~~ becomes a part of UK law once it comes into force. For instance the 2027/97 which ~~state~~ imposes unlimited liability on community air carriers ~~for harm~~ caused by in case of death or injury being to passengers whereas for a directive to come into force the member state has to make their own delegated legislation. An example of a directive may include 2000/43 EC which is a principle introducing equal treatment among citizens despite ethnic or racial origin. The regulations have a direct effect on UK law but directives have to be included ~~through~~ by way of statutory instruments. But however in the case of Van Duyn v Home office it was held ~~that~~ that directs will have direct effect on member states if they impose clear, unconditional obligations on the member states.

Examiner comments
This scored 6 marks, it provides both examples and analysis.

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.
The command word in this question was 'Assess', which was looking for an extended answer using examples. Many candidates did not understand what the question was asking, and did not pick out the word 'sovereignty' in the question. There were many economic focussed answers. There was no need for a conclusion though students often attempted to reach one.
Many candidates treated this as solely an EU institution question, others just dealt with the courts' hierarchy. On the whole, this question was not done well.
For **level 1** candidates demonstrated isolated elements of knowledge
For **level 2** candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.
For **level 3** candidates demonstrated accurate understanding of the question supported by relevant authorities.
For **level 4** candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities.

In June 2016, the UK public voted in a referendum to decide whether to remain in the European Union or whether to leave. The result of the referendum was a vote to leave.

(c) Assess, using examples, the possible effect of the UK's decision to leave the European Union, on the sovereignty of the UK Parliament to make or amend laws.

(10)

When UK joined in European union in 1973, they gave up on ~~which was then called the European E~~e certain rights of their sovereignty thus entered to abide by a 'community law' which affected UK's sovereignty ~~ever~~ on the areas where there were EU laws operating. Parliamentary sovereignty meant that the British Parliament was the supreme law making authority and could not be questioned. Yet, due to the EU's laws having ~~certain~~ some dominance over national laws, ~~this was~~ sovereignty affected.

For example, in the case of Van Gend en Loos, the European Court of Justice ruled that during conflicts, the European law prevails over national laws. This was argued by the ~~judge~~ dutch saying a foreign law cannot decide which laws should prevail ~~and~~ but was rejected by the European court of Justice. As a result, ~~European~~ it was established that European law prevails over national law of all member states including UK explaining that the national law should be amended to comply with the European Union's laws. As a result, the sovereignty of states was questionable as their law was no longer supreme. However, with the decision to leave, there will be no foreign law holding dominance over national laws and ~~British law~~ the sovereignty will be regained as ~~all~~ British laws would independently govern Britain.

Moreover, it was established in the case of Costa vs. Enel that 'the states have given up ~~their~~ some of their sovereign rights and created a community law which binds all states and nationals'. As a result, it established that European law creates precedent over domestic laws which meant

the courts were bound to obey the decisions of the European Court of Justice. This affected the sovereignty as foreign laws were binding the enforcement of laws created by the UK parliament. By leaving, previous precedent will only limit to decisions of British courts which re-establishes sovereignty ~~sovereignty~~ further, as seen in Factortame (4), British Parliament tried to pass the Merchant Shipping Act which aimed to protect British fishermen by preventing vessels which were not owned by a majority of British shareholders to fish in British waters regardless of the motive, the Act was challenged by the ECJ saying it ~~breached the~~ was incompatible. Thereby, the sovereignty is was affected as Britain ~~PEE~~ was not allowed to pass the Acts they wanted - there were restrictions. Thereby, leaving will give them the independence to create their own laws without foreign influence; thus, the Parliament will be supreme.

Also, as seen in the case of Francovich vs. Italy, individuals could claim compensation from the ~~a~~ state if the directives were not passed accordingly. Thereby, the sovereignty was affected as people could challenge domestic laws in a foreign court. Therefore, by leaving, this will not be possible and the highest court in the system would end at the Supreme Court.

Examiner comments	Examiner tip
This scored 8 - top band marks. It assesses the current position, discusses authorities and considers sovereignty issues post EU.	Try and identify the key issues/cases to enhance your mark. This will mean your answers will be more concise and focused.

Question 5: (20 marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. This is the question candidates need to spend some time on, due to the fact that there are no subsections to the question and therefore the total question marks of 20 are based around a single answer.

The command word in this question was 'Evaluate', which was looking for an extended answer. Candidates were expected to identify the lay people used in the English Legal system and then analyse their effectiveness by reviewing their information and drawing on their evidence. They were expected to use their understanding to justify an argument and a conclusion.

Candidates needed to firstly consider who lay people are. Candidates then needed to consider their effectiveness. Some candidates did not understand the term 'lay people' and wrote about lawyers. Many candidates omitted this question completely.

For **level 1** candidates demonstrated isolated elements of knowledge relating to lay people

For **level 2** candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For **level 3** candidates demonstrated accurate understanding of the question supported by relevant authorities such as statistics or cases.

For **level 4** candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities to reach a justified conclusion as to whether lay people are effective or not.

Despite the fact that it is the English "legal" system and therefore comes with the presumption of legal qualifications, there are lay people with no legal expertise whatsoever in all levels of the system. The use of lay people has been in practice for centuries, and on the basis of the fact that normal citizens should also participate in and observe the administration of justice. The extent to which they are effective at their jobs, however, is debatable.

The most numerous groups of lay people in the justice system is arguably the lay magistrates. They sit in Magistrate's Courts and try 97% of all criminal cases, giving them a very heavy workload. They also try some family cases and those in the Youth Court. They can be said to be effective in regards to the sheere amount of cases they hear, hold trials for and give judgments on. They impose sentences, usually non-custodial, and also handle administrative matters. But at times where complicated legal matters unexpectedly come up, lay magistrates can have difficulty ~~with~~ solving the matter due to their inexperience.

The jury is another important institution of the English legal system, comprising of lay jurors.

Juries only try a minority of criminal cases in the Crown Court, since most of them are tried by magistrates in the Magistrate's Court. The jurors are given the evidence of the case, and they decide the facts – whether the defendant is guilty or not guilty. The judge then applies the law in the case. Juries are generally reliable and unbiased and ~~give~~ can give an idea of the perceptions of the lay people and citizens of the country, but there is always a risk of bias / prejudice, the jury may sometimes be misled and deliver an unjust decision and the judge can do nothing to change it.

The individuals who provide ADR (Alternative Dispute Resolution) services are also lay people and play ~~an vital~~ a vital role in the civil justice system, even if they are not a part of it. This is because ADR can reduce the number of cases going to court, ~~as~~ thereby relieving the workload of the courts and offering more inexpensive, efficient, personalised and informal methods of resolving disputes through mediation, conciliation, and arbitration. The Civil Procedure Rules 1999 encouraged wider use of ADR and the methods have been increasingly popular in recent years, especially businesses with more and more parties choosing to ~~to~~ keep these cases out of the stress and ex-

peace of the official court system. ADR methods also have a generally high success rate, with settlements that are ~~are~~ often much more generous and quickly achieved than court award. An example of a conciliation service is ACAS, which deals with employment disputes and is funded by government.

Finally, advice bodies such as the Citizens Advice Bureaux and private ombudsman services are usually headed and run by non-legally qualified professionals, but they still provide vital information and help about to consumers and parties in dispute about their options - which also reduces the number of frivolous / small claims cases going to court. However, this advice is ~~not~~ not generally binding or enforceable and the parties may find that they are still in need of professional legal assistance.

Overall, while lay people do fall short in some regards - especially where specialized legal knowledge and expertise is required - their influence and their contribution to making the legal system more flexible and accessible is undeniable and they will almost certainly always have a place in the law.

Examiner comments
This scored 13 marks. It was a good answer, but not top band. It explained and identified a wide range of lay people and their roles However, the candidate could have been more evaluative, particularly about magistrates and juries and used some authorities to justify the conclusion.

Paper Summary

Based on their performance on this paper, candidates are offered the following advice:

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean your answers will be more focused.
- Look at the marks allocated to the question and spend only the appropriate amount of time on the question based on the marks.
- In a question with several parts, read all the parts and decide what information to put in each part before starting part a.
- Use examples to illustrate definitions or points made in the short answer questions and additionally relevant case law and legislation to illustrate longer answers.
- Provide balanced answers when asked to provide advantages and disadvantages.
- Provide a conclusion for 'evaluate' questions.

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