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## General Certificate of Education

# Law 1161

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

# Report on the Examination

*2009 examination - June series*

**This Report on the Examination uses the new numbering system**

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*Dr Michael Cresswell Director General.*

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

***General***

As centres will be aware, candidates were required to answer two questions from one section and one from the other. The two sections are Law Making and the Legal System. The vast majority of candidates followed the rubric, though there were a handful who answered questions from several topics or answered only two topics in total.

It was clear that centres had concentrated on teaching a limited number of topics, as examiners often found that whole centres had answered the same three topics. There was the impression, particularly for answers to the Law Making section, that candidates were reproducing prepared answers, as the same terminology, examples and order of points were seen throughout a centre. This was not as evident in answers to the Legal System section, presumably as questions are not as predictable. In terms of standards, there was the full range from some superb scripts containing very impressive levels of detail, to those that could make only limited and superficial comments. Overall, with some exceptions, the standard of the evaluation answers tended to be lower than the descriptive ones. The majority of candidates answered two questions from Section A, and, overall, the answers to Section A were more accurate and of higher quality than those in Section B.

Some candidates disadvantaged themselves in the course of their answers by not following instructions: for example, discussing advantages when they were required to deal with disadvantages as in Question 09, or the reverse as in Question 06, or including much irrelevant material as in Question 20 where the work of the jury was often described.

On the whole, candidates seemed to manage their time efficiently so that, despite the need to write nine separate responses, there was little evidence that candidates were unable to finish the paper because of shortage of time. It was also encouraging to note that no-one attempted to answer three topics from one section. However, it was slightly disappointing to find that some candidates only answered two topics, thereby placing themselves at a considerable disadvantage.

***Topic: Parliamentary Law Making***

This topic on statutory interpretation was very popular and often produced many excellent answers as candidates demonstrated good knowledge of some relevant case law. Most candidates were able to use one or more cases to illustrate the rules in Questions 01 and 02 and some managed to use a case in Question 03.

In Question 01, candidates were required to describe the literal rule and internal aids to statutory interpretation. Case law was often used well to illustrate the operation of the literal rule, though weaker candidates tended to explain just the facts of a case and not relate the facts back to the rule. Cases such as **Whiteley v Chappell** and **Berriman and Fisher v Bell** regularly featured and occasionally **Cheeseman** was used. Weaker candidates attempted to explain the literal rule with just the use of the word ‘literal’ or ‘literally’ with little further development, which received only limited credit.

In Question 02, candidates were required to describe the golden rule and external aids to interpretation. Better candidates were able to refer to both the narrow and wide applications of the golden rule and use appropriate case law for each, such as **R v Allen, Re Sigsworth** and **Adler v George**. Some students confused the golden rule with the mischief rule and used cases such as **Smith v Hughes** to illustrate their answers. Some attempted to explain the

golden rule without reference to the literal rule. External aids were also confidently described by most candidates, often with appropriate case reference, usually showing the relevance of **Pepper v Hart**.

The topic on Statutory Interpretation required a discussion of the disadvantages of any two of the rules of interpretation. Candidates could, and frequently did, draw on material that they had previously described, or they could have introduced new material or rules. Some candidates could not resist writing about advantages as well, which of course earned them no credit, but most dealt with some relevant disadvantages of two rules. Better responses were able to illustrate a disadvantage by referring to a case, eg the fact that the literal rule can sometimes lead to injustice can be demonstrated through a case like **Berriman**. Some candidates who discussed the mischief rule felt obliged to describe the rule in detail before making any comment. This description earned no credit, but high marks were achieved by others who purely focused on the disadvantages of the rule.

***Topic: Delegated Legislation***

This was again a popular topic, but Question 04 particularly was not the general question some candidates were hoping for. Both Questions 04 and 05 saw some responses which contained a good deal of material which was not a direct answer to the question. Centres are reminded that questions on this paper can be general, where, for example, all the elements of precedent need to be described, but in less detail, or specific on one or more elements, where candidates are required to explain the topic in greater detail to attain the highest marks.

In Question 04, candidates were required to explain the specific requirements in judicial precedent of *ratio decidendi* and *obiter dicta*. *Ratio* is the legal reason for the judges' decision, which in the case of the higher courts has to be followed by lower courts. Often **Donoghue v Stevenson** and **R v Howe** were used as examples to support the explanation. *Obiter* is the 'other things said by the way' that do not form the legal reason for the decision, and again **Howe** was regularly used as an example when it was said that duress is no defence to attempted murder; this *obiter* was then followed in **R v Gotts**. Another single case that covers both *ratio* and *obiter* is **DPP v Smith 2006** when the defendant cut his girlfriend's pony tail. Many answers did not focus on the specific terms in the question, and often material on the meaning of *stare decisis*, hierarchy and law reports was included but received no credit. The best responses were those that could explain more fully the meaning of *ratio* and *obiter* and illustrated the explanation with examples.

In Question 05, candidates were required to explain how the House of Lords and the Court of Appeal can avoid following a precedent. For the House of Lords, their main power stems from the 1966 Practice Direction (Statement) which allowed them to depart from a previous binding precedent 'when it is right to do so'. A case such as **BRB v Herrington** which departed from the decision in **Addie v Dumbreck** was often seen to illustrate this point. A more recent example was the well-publicised decision in **A v Hoare 2008** allowing a claim by a rape victim against her attacker who had subsequently become a lottery winner. This decision departed from the precedent of **Stubbings v Webb 1993**. The Court of Appeal has specific power to depart from a binding precedent in the circumstances set out in **Young v Bristol Aeroplane 1944**, and in criminal cases where the precedent would result in injustice to the defendant. Both courts can avoid precedent when they overrule, reverse or distinguish a precedent. Many candidates ignored the specific requirements of the question and wrote a generalised answer on ways of avoiding precedent without referring specifically to either court. Better candidates made explicit reference to both the House of Lords and the Court of Appeal, and demonstrated understanding of their different powers.

Question 06 required a discussion of the advantages of judicial precedent. This could have covered issues such as the flexibility of the procedure – it can deal with new cases as they arise and with issues that have not been covered by any parliamentary law. **R v R** or the case of the conjoined twins, **Re A**, were often used as an example of this point. As a result of dealing with real situations such as these, judges can set out detailed rules as to how future similar cases can be dealt with. As judges are legally qualified, and precedent is often made by the higher appeal courts, their decisions are considered to have considerable authority. Judges are independent of the parties and the government, and their decisions are fair and impartial. Most candidates were well prepared for this answer, gaining higher marks for this answer than the other two questions, and supported their points with case examples.

***Topic: Statutory Interpretation***

This was a very popular topic and all questions were generally answered well.

In Question 07, candidates were required to explain what is meant by statutory instruments. This could have included an explanation that government ministers make this form of law if they have power given to them by an enabling Act; that ministers frequently use this form of legislation for making detailed rules, often after consulting with experts in the field; that commencement orders for primary legislation usually appear in this form and that, once drafted, a statutory instrument will have to be laid before parliament before it comes into force. Examples of statutory instruments would have enhanced the answer. A common example seen was orders under the Minimum Wage Act 1998 to increase the amount of the minimum wage. Well-prepared candidates were able to approach this part confidently to explain both the meaning and to refer to examples. However, it was common to find answers that referred to the other types of delegated legislation as well, and as with other questions spending time on material that could not receive credit. Centres, again, need to anticipate that a question may focus on just one or two aspects of a topic and candidates need to adapt their answers accordingly.

In Question 08, candidates were required to explain either parliamentary or judicial controls on delegated legislation. Parliamentary controls could have included a description of the affirmative and negative resolution procedures and the work of the scrutiny committee. Some answers also referred to the questioning of ministers, which shows an excellent understanding of the role and procedures within parliament. Explanations of judicial controls could have included reference to the judicial review procedure and who can take such action, the difference between procedural and substantive *ultra vires* and judicial review taken on the grounds of unreasonableness. It was encouraging to see many answers referred to the case of **Rogers v Swindon PCT 2006** to illustrate this aspect. There were many pleasing responses explaining both parliamentary and judicial controls, with much evidence of thoroughly learned material, supported, in the case of judicial controls, by relevant case examples.

Question 09 required a discussion of the disadvantages of delegated legislation, which could have included its undemocratic nature; it is suggested that at times such laws are made by the unelected civil servants in the government department with limited input from or understanding by the minister. In addition, it is said that some legislation gives power to ministers to impose a tax with limited or no debate in parliament. The volume of delegated legislation is another issue, as well over 3000 pieces a year are made, often with limited publicity to the general public. In view of the amount made, there is said to be limited scrutiny of delegated legislation by parliament. This part was also well answered and many candidates were able to discuss several disadvantages, again supporting their statements with examples.

***Topic: Judicial Precedent***

This was the least popular of the Section A topics.

In Question 10, candidates were required to explain briefly what is meant by parliamentary supremacy and to outline one limitation on this. The explanation could have covered both political supremacy – the fact that parliament is elected by the people and so has the power to pass laws on behalf of the people – and legal supremacy, showing that law passed by parliament is the highest form of law and must be followed by all – judges, government and the general public. Limitations could have been any of the EU, the Human Rights Act 1998, supported by reference to the ECHR or devolution. Most answers had some relevant ideas about the meaning of parliamentary supremacy, even though the distinction between political and legal was seldom formally made. Most answers were able to identify a limitation: the most frequently mentioned limitation was the European Union, at times supported by an example such as **Factortame**.

In Question 11, candidates were required to outline the **roles** of the House of Commons and House of Lords and the Crown in parliamentary law making. This required more than just the procedure in the making of laws, though answers that concentrated on procedure alone did receive a certain amount of credit. The role of the Commons could have included reference to the fact that the majority of legislation is introduced into this House, often as a result of implementing election promises, fulfilling its democratic role by considering and voting on proposals, and particularly at committee stage giving detailed (and possibly expert) scrutiny, considering amendments and improving the original proposals. Bills that propose new taxes or extensions to existing taxes must be introduced, debated and passed by the elected house. The role of the House of Lords is slightly different as it has greater independence than the Commons as its members are not elected and so there is less political party influence there. Often, members of this House have greater expertise in the field of legislation, which helps in the discussion and scrutiny of legislative proposal. This House has under the Parliament Acts only the power to delay legislation passed by the Commons for a certain period – it cannot throw it out completely, and with money bills the period of delay is even more limited. The role of the Crown is purely constitutional, the Queen being required to sign a bill that has been passed by both Houses in order that the measure can come into force. Relatively few candidates answered the question set, most preferring to explain procedure in the both houses. This question illustrates the need for candidates to prepare for a variety of different kinds of questions on a topic. It was difficult to secure the highest marks unless some reference to **role** was included and the best answers were able to identify distinctive roles for the three elements as well as explaining that the Commons and Lords have a number of functions in common. Most candidates recognised that the Crown has a largely formal role and the better ones were able to say something about how disagreements between Commons and Lords are resolved by referring to the Parliament Acts.

Question 12 required a discussion of the advantages of law making in parliament. This could have included points such as its democratic nature, particularly in the House of Commons when the elected government is fulfilling its election promises, that laws are often introduced after detailed consideration and inquiry – particularly when they have been recommended by the Law Commission; the parliamentary process is open and reported by the media so that all proposals are scrutinised and not just forced through; that changes to original proposals can be and frequently are made, often to improve the measure; that laws made by parliament have to be enforced as they are giving effect to the will of the people. This question was generally well answered, with a variety of advantages identified. The best answers were able to support their answers with detail and (where) possible actual examples.

***Topic: The Civil Courts and other forms of dispute resolution***

Very few candidates attempted this topic, though it was evident that some centres had prepared their candidates well because there were some good answers to some questions.

In Question 13, candidates were required to describe the role of a judge in a civil court claim for damages. This could have included reference to the courts where a possible action could take place, the role of a judge dealing with pre-trial issues, hearing the evidence and legal arguments during trial, deciding liability and any remedy, including the amount of compensation and possibly dealing with any appeal against the original verdict. Most answers were able to identify some aspects of the role, often in a fairly generalised way. Few referred to the pre-trial role and fewer still referred to appeals.

In Question 14, candidates were required to explain briefly how judges are trained for their work in court. This topic would not have been asked in the previous specification but judicial training is part of the new specification. An answer could have included reference to the work and responsibilities of the Judicial Standards Board who are responsible for providing and supervising judicial training; experience as a part time judge prior to full time appointment and the provision of a mentoring scheme. Again, the main problem was that answers were often generalised and lacked a detailed understanding of what is actually involved in the training that judges receive. Few mentioned the Judicial Studies Board. A number of candidates focused purely on the fact that judges usually have to have experience as a barrister or solicitor. One candidate suggested that the minimum period of experience required was 50 years, which would make for a very elderly judiciary!

Question 15 required a discussion of the importance of judicial independence. This would be a familiar question from the LAW2 paper and could have covered the role of a judge in upholding the Rule of Law and upholding public confidence in the judiciary and the legal system. It does this by ensuring that any decision is made free of pressure or influence from either of the parties, the lawyers in the case or the government. By being independent, judges are able to hear all types of cases, including those involving the government and state institutions. A number of answers consisted of description rather than a discussion, thereby limiting the marks available, though on the whole most answers had some understanding of why it was important for judges to be independent.

***Topic: The Criminal Courts and lay people***

This was a popular topic for some centres, though many answers struggled to provide detail of funding in Questions 17 and 18.

In Question 16, candidates were required to explain how a solicitor is trained and qualifies. This could have included reference to both degree and non-degree entry. If a candidate has chosen the degree route, there are two further choices – studying a law degree or a non-law degree. Answers could have covered both routes and the different courses that have to be followed post-degree (the CPE, the GDL and the LPC) and then the post-academic stage to complete a training contract before being admitted. Better answers would have referred to the contents of these courses and what has to be covered in a training contract. The alternative non-degree route follows qualification as a legal executive. This should have been a straightforward question, on which well-prepared candidates could score highly. However, a number of answers either left out some of the stages, or what is done at each stage, or spent too long dealing with the degree and pre-degree (A Level) stage. Surprisingly, in some answers, there was confusion between the qualifying of solicitors and barristers.

In Question 17, candidates were required to outline where Sylvia, who had been injured in an accident, could get information about a possible claim, and how she could pay for such advice. The traditional source of advice is a solicitor, and some firms hold themselves out as specialists in this field. Alternatively, she could approach the Community Legal Service for advice, though if she is a competent adult it is unlikely that they will provide much help for such a claim. She could approach or be approached by a claims company who may then refer her to a lawyer. She could seek advice herself from the CAB or via the internet or (if insured) through her insurance company, trade union or motoring organisation. Paying for such advice could be through Legal Help, privately, through conditional fees (no win no fee) or possibly through an insurance policy or any union membership. This question was quite well answered by some candidates, with a variety of sources of advice and ways of paying being mentioned.

Question 18 required a brief discussion of the different methods of funding a civil court claim. This could have drawn on the descriptive material previously covered. The advantages could have included reference to the benefit of being able to take action via the different schemes without having to pay a large amount before launching a claim. Disadvantages could include the cost of civil litigation (and perhaps coverage of the reasons why it is so expensive), the cost of any before-the-event insurance, the qualifying thresholds, and the limited availability of state funding. Most candidates sensibly limited their comments to a couple of methods of funding, usually no win-no fee and private funding, for which they could score well.

***Topic: The Legal Profession and other sources of advice and funding***

This was a very popular topic, though most candidates scored more highly on Questions 20 and 21 than on Question 19.

In Question 19, candidates were required to identify the criminal courts that can hear cases involving adults and to outline the different types of offences that can be dealt with in these courts. This could have included identification of the Magistrates Court that deals with summary offences and some either-way offences where the defendant opts for trial there. Crown Courts deal with the remainder of either-way offences and indictable offences are tried here. Appeals from decisions in the Magistrates Court are usually heard in the Crown Court, though sometimes may be heard in the QBD Divisional Court if a point of law is involved. Appeals from the Crown Court are heard in the Court of Appeal and from there the House of Lords. It was clear that many candidates were not expecting a question on the Criminal Courts and types of offence, and there were some poor answers, showing limited knowledge of the basic structure and procedure, especially the appeal courts and process. Many candidates were, however, able to work out an answer by thinking through what they knew about summary, either way and indictable offences and matching these to the appropriate courts. It was surprising to find that many candidates thought that the High Court hears criminal cases that are too serious to be heard in the Crown Court.

In Question 20, candidates were required to describe how jurors qualify and are selected to serve. This could have included qualification such as age, residence and selection by the Central Summoning Bureau, reasons for not serving such as disqualification, excusal and good reason. Vetting and challenges could also have been referred to as well as the final selection in court. Some candidates disadvantaged themselves by covering the work of juries which could receive no credit. However, most candidates were able to score reasonable marks as they showed some knowledge of parts of the process.

Question 21 required a brief discussion of the disadvantages of using lay persons to decide criminal trials. This required consideration of both lay magistrates and jurors, though the disadvantages may be considered common. Issues such as perverse verdicts (illustrated by

cases such as **Ponting** for juries or different sentences imposed by different benches for similar convictions), possible bias, the make-up of the panel, magistrates being middle class, middle-aged and middle-minded, juries not understanding the evidence, feelings of pressure, possibly from the media or other members of the panel or the judge or court clerk. Secrecy of decisions made by juries, supported by **Young,** featured heavily, though the contrast with magistrates having to give reasons for their decisions barely featured. Again, most candidates were able to show some knowledge of some relevant points and supported the points made with some kind of authority.

***Topic: The Judiciary***

This was a surprisingly popular topic, probably due to the aspects of ADR.

In Question 22, candidates were required to identify the civil courts for Ajay's accident claim and also to outline mediation or negotiation as a means of dealing with a personal injury claim. The courts could be the Small Claims Court, the County Court or the High Court, depending on the amount of the claim. Possible appeals could be made to the Court of Appeal or the House of Lords. Alternatives to the courts as a means of solving a claim could have covered how negotiation or mediation could take place and possible outcomes – whether they are legally binding or not. Many candidates struggled with this part and were unable to identify the correct civil courts. A surprisingly large number of answers referred to criminal rather than civil courts, particularly asserting that the Magistrates Court has a role to play in a civil claim. Of those who were able to identify the County Court and the High Court, relatively few were able to explain clearly the criteria which determine the court that the case would go to. Understanding of appeal routes was even more limited. More answers showed better understanding of how mediation or negotiation worked, though few referred specifically to how Ajay could use either procedure.

In Question 23, candidates were required to describe either arbitration or tribunals as a means of solving civil disputes. This could have included who hears the matter, the nature of the hearing, the type of cases dealt with, the outcome and any possible appeals. This question presented few difficulties to well-prepared candidates and there were many good answers, as examples of the types of cases dealt with were regularly included and the process was accurately described.

Question 24 required a brief discussion of the advantages and disadvantages of negotiation and of civil court trials. Advantages of negotiation could include the speed, efficiency and informality of settling the case, together with preserving the relationship. Disadvantages can include any problems encouraging the parties to participate, the inability of the parties to reach a conclusion and possible problems enforcing the decision. Advantages of a court trial could include matters such as the impartiality and expertise of the decision makers, a certain outcome and the possibility of an appeal. Disadvantages could include the cost of any action (including any costs awarded), the possible lack of, and cost of, legal representation and the efficiency of the process which may affect the future relationship of the parties. This question confused some candidates. Some seemed to treat a civil court trial as if it were a form of ADR and therefore different from going to court, and others clearly wanted to talk about the other forms of ADR rather than negotiation. Those who understood what 'civil court trial' meant generally wrote effectively and many candidates who were uncertain in Question 22 about which courts would hear an accident claim were much more confident about the advantages and disadvantages of taking someone to court. It was noticeable that many candidates only discussed the advantages and disadvantages of negotiation, again limiting the marks that could be gained.

# 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.