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General Certificate of Education

Law 1161

Unit 1 (LAW01) Law Making and the Legal System

Report on the Examination

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

General

The vast majority of candidates complied with the rubric by answering three questions, each of three parts. One question has to be chosen from part A, one from part B and the other from either section, according to the candidate's choice. Quite often, all candidates from a centre answered the same questions, suggesting that they may have been taught only those topics. Quite regularly, candidates answered two questions came from Part A and often these answers proved to be of a higher quality than answers to questions from part B. Most candidates seemed to be able to cope with time management and completed all their answers. Many candidates were able to quote examples and case law to support their answers. It appeared to examiners that there had been a high level of preparation by many candidates. Only to a very limited extent did candidates fail to address question requirements appropriately.

SECTION A: LAW MAKING

Question 1

(a) In this question, candidates were required to outline the three specific elements of judicial precedent: the court hierarchy, *ratio decidendi* and law reporting. The court hierarchy required an outline of the civil and/or criminal court structure, which courts bind each other and which are bound by others. The *ratio* required an outline of what this means, perhaps a comparison with *obiter dicta* and particularly examples of the *ratio* of a decision. Often the examples of **Donoghue v Stevenson** and **R v Howe** were used to illustrate the *ratio* of a decision. Law reporting could have referred to the need for the reporting of a decision, who writes reports and where the reports are found, with examples such as the All England or Weekly Law Reports series, newspapers and internet sources. Higher level answers were able to list the courts, civil and/or criminal, and to explain the effect of binding precedent on each court. Weaker candidates listed the courts but without explaining the effect of precedents. Stronger answers were able to explain the effect of *ratio* and perhaps to make comparisons with *obiter*. Law reporting tended to be glossed over by many candidates, but some answers provided named examples of series of reports and occasionally there was reference to the Council for Law Reporting.

(b) In this question, candidates were required to outline how judges can avoid precedent, when they distinguish a precedent and when they overrule a precedent. This outline could have included examples and commonly seen case examples were those of **Merritt v Merritt** and **Balfour v Balfour** for distinguishing and Herrington overruling **Addie v Dumbrek**. Candidates generally answered in greater detail on distinguishing, most quoting **Balfour** and **Merritt** cases as examples. Some were actually able to explain why the two cases were materially different. Overruling was not always related to the powers of the House of Lords/Supreme Court, but again stronger candidates could explain case law examples such as **Davies v Johnson** and **Pepper v Hart**. Some candidates believed that the Practice Statement gave authority to all levels of judge to overrule a previous decision.

(c) In this question, candidates were required to discuss either the advantages or the disadvantages of judicial precedent. In the advantages, they could have discussed issues such as the flexibility of dealing with each individual case, that judgments can provide detailed rules on how to deal with future situations, that judgments are made by

expert impartial judges, and that judgments from the higher courts carry great authority. In the disadvantages, they could have discussed the facts that judges are not elected and so their decisions are not seen as democratic; that a case can only become a precedent if it is taken to (the higher) court and that there are considerable obstacles to this happening; that each judge may give a different reason for the decision; that in a lengthy judgment it may be difficult to identify the *ratio*; and that because of the number of decisions reported, it may be difficult to find a relevant precedent. Many candidates chose to focus on the advantages of precedent and were generally able to describe several advantages: again, stronger candidates supported their discussion with case law examples.

Question 2

In some centres, this was a very popular answer.

(a) In this question, candidates were required to describe briefly the parliamentary procedure in passing an Act of Parliament. Better answers covered each of the readings and stages in both Houses, the difference between public and private bills, the ping-pong procedure and the effect of the Royal Assent. Many candidates dealt at length with the making of Green and White papers. Whilst, strictly speaking these are not part of the parliamentary procedure, coverage of these could receive limited credit, though in many cases this was at the expense of creditworthy material describing the process in the House of Lords. Often, answers were unbalanced, showing much greater knowledge of just one House. Many candidates did not refer to the taking of votes at relevant stages and, at times, showed confusion between the different readings. A particular problem seemed to be that many candidates were unable to give an accurate summary of the purpose of the committee stage, ie clause-by-clause scrutiny of the draft bill. There were some excellent answers, particularly for the stages of the Lords and the Royal Assent.

(b) In this question, candidates were required to describe either pressure groups or the media as an influence on Parliament in the making of laws. For pressure groups, this could have included a description of the types of pressure groups, and how and when they can influence: examples of groups and campaigns would have considerably enhanced an answer. For media, this again could have included how and who they influence, and again answers would have been enhanced by using examples of media campaigns. Generally, candidates were better at answering the pressure group option than describing the media, where answers often referred to the popularity of the government and public opinion rather than any legislative proposals.

(c) In this question, candidates were required to use the material from part (b) to discuss the advantages and disadvantages of the influence they had previously described. Advantages of pressure groups could have covered issues such as the raising of, and gaining of, public awareness of an issue; that they are mostly non-political; that they are experts on an issue; that they can be representative of public opinion, particularly if they have a large membership; that they can influence effectively if they are insider groups; and that they can be successful if they have the support of the media. Disadvantages of pressure groups could have included the fact that they are unelected and are therefore undemocratic; that they generally only representative of a single view; they can represent small numbers; and that, if they are outsider groups, they are unlikely to have any or much influence.

Advantages of the media as an influence can be that they can raise public awareness of a problem and/or an issue of particular public concern and they can support pressure group campaigns. Disadvantages could be that media campaigns can lead to 'knee-jerk' legislation such as the Dangerous Dogs Act 1991; that they could pick and choose which campaign to support, and that they may not be objective especially as they are generally commercially orientated. Many answers only briefly covered this question. Better candidates supported their answers with relevant examples.

Question 3

(a) In this question, candidates were required to explain what is meant by by-laws and Orders in Council. For by-laws, the explanation could have included who they were made by (generally local authorities and other bodies such as transport providers) and how they are made. Examples of the different types of by-laws would have considerably enhanced an answer. For Orders in Council, the explanation could have included the make-up and work of the Privy Council and, again, examples of laws made by them. This is always a popular question and candidates often effectively gave an example of a by-law relating to their own area to support their explanation. Other forms of by-laws were often covered, though there could have been more emphasis on public utilities and other bodies' powers to make delegated legislation. Answers on Orders in Council were generally good, with examples given, often relating to terrorism. Some candidates were not able to use the correct terminology, almost universally referring to delegated legislation as 'an Act'. Another common error was to describe the Dogs (Fouling of Land) Act as a form of delegated legislation. It is the local by-laws specifying particular areas of a town that are the pieces of delegated legislation made under the authority of a piece of primary legislation.

(b) In this question, candidates were required to explain merely judicial controls on delegated legislation. This could have included an explanation of the different forms of judicial review and examples of cases when the courts have reviewed legislation. Some candidates disadvantaged themselves by ignoring the instruction and explaining at length parliamentary controls, which could receive no credit. Weaker answers merely outlined the process of *ultra vires* with limited examples. Stronger answers were able to relate the two types of *ultra vires*, give case law examples and also mention unreasonableness: many quoted the case of **Rogers v Swindon Area Health Authority**. One answer tried to explain Wednesbury unreasonableness as being unable to attend the cinema on a Wednesday!

(c) In this question, candidates were required to discuss the advantages of delegated legislation. This could have included the speed of this form of legislation, especially in comparison with primary legislation, the expertise of the law makers, and that it completes the detailed framework of an Act. This could have allowed candidates to discuss issues such as the national smoking ban or the making of local alcohol bans. Stronger answers were able to support their answers effectively with examples but weaker answers tended to make assertions that were not supported.

Question 4

This was one of the most popular questions on the paper.

(a) In this question, candidates were required to describe the golden rule of statutory interpretation and one of the rules of language. A description of the golden rule could have used cases such as **Re Allen**, **Adler v George** and **Sigsworth** to describe the

different approaches. Many answers just dealt with the golden rule, even at considerable length, but, by doing this, candidates disadvantaged themselves by limiting the possible marks available. Weaker candidates were often confused when it came to illustration of the rule offering **Smith v Hughes**, **Fisher v Bell** or **Berriman**. The quality of the explanations of the facts of the cases was generally good when the correct cases were offered. It was common for candidates to say that the judges *changed* the meaning of the words 'to marry' rather than judges choosing the most appropriate meaning of the phrase. Stronger answers were able to explain the narrow and broad approaches to the golden rule, with appropriate examples. Weaker answers merely cited cases without explaining them.

Most candidates who answered this part of the question chose the *ejusdem generis* rule as the rule of language, and stronger answers were able to illustrate the answer with an appropriate case such as **Powell v Kempton Park Race Course**. Some candidates only identified a rule of language with limited further explanation, but some did not deal with this part of the answer at all.

(b) In this question, candidates were required to describe the mischief rule of statutory interpretation. Often, the description was made through the facts of a case, and the one most commonly used was **Smith v Hughes**. The rules from Heydon's case were often set out. The rule was generally described quite well, although weaker answers merely cited cases without explaining the facts or (more commonly) without showing how the result was an example of the rule.

(c) In this question, candidates were required to use the descriptive material in part (b) to discuss the advantages and disadvantages of the mischief rule. The advantages could have been the avoidance of absurd and unfair results (such as that in **Berriman's** case), the implementation of Parliament's wishes (as in **Smith v Hughes**) and the greater flexibility available to the judges. Disadvantages could have included that it is undemocratic as unelected judges are making law, that not every case lends itself to the mischief rule and that it may be difficult to find the mischief that Parliament was intending to deal with. Generally, most candidates dealt with both advantages and disadvantages, though only stronger candidates linked their point to a case.

SECTION B: THE LEGAL SYSTEM

Question 5

This was one of the least popular questions on the paper and was answered by a small number of candidates, though it was evident that, where candidates knew their material, they could score very highly.

(a) In this question, candidates were required to describe the work of barristers in and out of court. This could have described advocacy rights for trials and appeals, giving specialist advice out of court and preparation of specialist documents, and also how barristers acquire their work traditionally from solicitors but also directly from schemes such as BarDirect. Answers ranged from generalised responses with little detail to those which were clearly knowledgeable about all aspects of a barrister's work.

(b) In this question, candidates were required to outline how legal executives qualify and to explain briefly the work they do. For qualification, this could have described the work-based training and studying and the need with the other professions for continuing education. For the work of legal executives, this could have covered the traditional work

in a solicitor's office, but also newer avenues such as Licensed Practitioners (in Conveyancing and Probate) and the rights of audience in court. Some candidates could give full and detailed answers about both aspects of the question, whereas by contrast other answers wrote about solicitors and gave details of their work and training. Generally, the work of legal executives was covered in greater detail than their training.

(c) In this question, candidates were required to discuss briefly the advantages and disadvantages of obtaining legal advice from solicitors and from other sources such as CAB and law centres. Advantages of advice from solicitors could have covered the general availability, the specialist nature of the advice and that solicitors will generally be able to help the client through the case from the start to the end of the court process. Disadvantages could have covered the cost of obtaining this specialist advice and because of greater specialism, the difficulty of obtaining such advice when needed.

Advantages of obtaining advice from other sources could have covered matters such as the possibility of getting specialist advice, especially in areas where solicitors choose not to offer their services, that such advice may be of lower cost and be more locally available for the client. Disadvantages might have covered the limited availability and experience of specialist advice and therefore the need to refer cases to specialists with the additional costs that this would involve. Some responses were wide ranging and thoughtful, although some only answered on one aspect of the question. Some did not explain what other agencies might be. Similarly, obtaining legal advice in civil cases was dealt with briefly and/or incorrectly, showing selective preparation for this topic.

Question 6

(a) In this question, candidates were required to describe the work of a judge in a Crown Court trial. This could have covered pre-trial work in matters such as bail/custody, plea and venue, and hearings to do with admissibility of evidence. In addition, it could have dealt with the trial itself and sentencing. Answers often focused on the role of judges in court, with little, if any, reference to pre-trial matters. Some candidates confused the role of a judge in the Crown Court and civil courts.

(b) In this question, candidates were required to explain how judges can be dismissed from office. This could have covered, in the case of inferior level judges, the powers of the Lord Chief Justice in the event of incapacity or misbehaviour. In the case of superior level judges, it could have covered the roles of the Office of Judicial Complaints and/or the Judicial Appointments and Conduct Ombudsman, as well as the ultimate sanction of a parliamentary petition. A good number of answers referred to the current rules. Stronger answers were clear and made effective reference to the Office of Judicial Complaints. However, weaker candidates were less successful and tended to give general answers.

(c) In this question, candidates were required to discuss the importance of judges being independent. This could have covered the fact that the public have confidence in an independent judiciary, that judges help to uphold the idea of the Rule of Law, that in all cases they make decisions independent of the parties and, in cases of judicial review, they can make decisions that affect government. Answers varied between candidates who were able to address the issues confidently and those where independence was dealt with briefly and/or incorrectly, showing limited understanding of this topic. Some candidates tended to write about *how* judges are independent rather than *why*.

Question 7

This was probably the most popular question in Section B.

(a) In this question, candidates were required to describe briefly the appointment of lay magistrates and to outline their training. This could have covered the general qualifications and disqualifications of applications of lay magistrates, the suggested personal qualities and the need for balance on the bench. The training requirements of the Judicial Studies Board, usually run by the court clerk, could have been covered in the second part of this question, followed by reference to mentoring, ongoing training and appraisal, and the specialist training for chairs and on youth and family panels. Some candidates disadvantaged themselves by concentrating on one of the topics, most usually appointment, which meant that they limited the marks available to them. The appointment of lay magistrates was, for many candidates, the main focus of the questions: training was usually dealt with in a few sentences. Most candidates could relate the various stages of appointment for a JP and give details of desired qualities and even what applicants would be asked at the interviews.

(b) In this question, candidates were required to describe the role of a jury in a Crown Court trial. This could have covered the hearing of evidence in court, the summing up by both sides and the directions by the judge. It could then have covered the jury room discussions and the arrival of verdicts and their subsequent announcement in court. Some candidates disadvantaged themselves by writing at length about how juries are chosen, which could receive no credit. It was not uncommon for candidates to give a comprehensive answer without actually saying what verdict a jury might reach. Stronger answers impressed by citing authority such as Bushell's case and the Contempt of Court Act.

(c) In this question, candidates were required to discuss the disadvantages of using either lay magistrates or jurors. For lay magistrates, various points could be made, such as inconsistent sentencing among different benches, feelings of bias, the make up of the panel, possible media pressure and, in some cases, the complexity of the issues. In the case of juries, candidates could have covered issues such as perverse verdicts, selection issues on the make up of the jury, possible media pressure in high-profile trials and the length and complexity of the issues. This evaluative answer was commonly the best part (c) on the answer paper, with stronger candidates citing authority, cases and research findings in support. Stronger responses on juries gave case law examples of either perversity, bias or incompetence. Some misread the question and discussed advantages or discussed both advantages and disadvantages. Credit could only be given for answers to the question asked.

Question 8

This was one of the more popular questions in Section B.

(a) In this question, candidates were firstly required to outline the possible courts that could deal with Tilly's compensation claim. There was no indication of the severity of Tilly's injuries and therefore the amount of the claim. Answers could therefore have covered all the possible trial courts from the Small Claims court, County Court and High Court, depending on the amount claimed. After a trial, the possibilities of appeals could have been covered with reference to the Court of Appeal and the House of Lords, now the Supreme Court. The second part of this question required a brief explanation of negotiation as a way of settling a civil claim. This could have covered how negotiation could arise, how it works, the possible outcome and whether appeals are possible. A

substantial number of candidates suggested that the Magistrates Court would have dealt with Tilly's claim ,though most referred to the County Court as well. Fewer were able to explain accurately the different tracks and financial limits or the appropriate division of the High Court. Most were able to identify the appeal courts accurately.

(b) In this question, candidates were required to describe either arbitration or tribunals as a means of dispute resolution. Whichever option was chosen, answers could have covered the type of cases covered, the qualification of the arbitrator or panel, the nature of a hearing, the outcome, the possibility of an appeal and the enforcement of the outcome. Arbitration and tribunals were equally popular. Stronger candidates showed good preparation as they clearly followed the requirements of the Potential Content. Weaker candidates tended to give general answers, with limited examples of the type of cases dealt with.

(c) In this question, candidates could have drawn on the material covered in part (b) as they were required to discuss the advantages and disadvantages of either arbitration or of tribunals. Surprisingly, some candidates decided not to use this benefit and discussed the alternative to that covered in part (b). The advantages of arbitration could have covered matters such as the speed, informality and convenience of a hearing; the expertise of the arbitrator; and the limited need for legal representation, and therefore lower costs compared to court hearings. Disadvantages of arbitration could have covered the lack of state funding available and therefore that some will be unable to afford assistance or representation, hence a possible imbalance between the parties; and limited appeal rights.

For tribunals, possible advantages could be the expertise of the panel;, that reasons for their decisions have to be given and therefore appeals against decisions can be made; and the informality of hearings and hence the limited need for legal representation, which in turn leads to lower costs. Often, tribunal hearings can be scheduled more quickly than court hearings.

Disadvantages of tribunals could include the possible influence of the chair over the other panel members; in some cases, the need for representation and therefore the cost of the case, which could again lead to imbalance between the parties. Appeals are possible but eventually to the courts, which again means higher costs. In some tribunals, there is the possibility of media interest in view of the subject matter of the dispute, which may not be favourable to either party.

Generally, this was well answered, but some candidates discussed advantages or disadvantages of ADR as a whole rather than specifically of Arbitration or Tribunals.

Many answers referred to the Supreme Court in their answers, showing good knowledge of recent changes in the court structure. Credit was given to mention of both this court and reference to the House of Lords, as it will again in the summer series

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.