



**General Certificate of Education (A-level)  
January 2012**

**Law**

**LAW01**

**(Specification 2160)**

**Unit 1: Law Making and the Legal System**

***Report on the Examination***

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## **Unit 1 (LAW01) January 2012 Examiners report**

### ***General***

As in previous sessions, students from each centre tended to focus on particular topics. As a result, most answers from a centre were similar in content and in the order in which points and information were introduced. The great majority of students attempted two questions from Section A and one from Section B, though it was pleasing to see that some students answered two topics from Section B – particularly the civil and criminal court topics. In some centres, questions 19, 20 and 21 proved popular. All questions in Section A attracted significant numbers of answers with no one topic proving noticeably more popular than others. In Section B, the questions on criminal courts and lay persons were overwhelmingly the most popular, but the civil courts questions were attempted by quite a few students. It was noticeable that a number of candidates used evaluative material in descriptive questions and as a result limited credit could be given. This approach was particularly seen in questions 04, 08 and 14. There was some variation in quality of scripts, with students from some centres clearly better prepared than others. Nearly all students complied with the rubric requirements and the great majority attempted nine questions as required by the paper.

### **SECTION A**

#### **PARLIAMENTARY LAW MAKING**

##### ***Question 1***

Question 01 required students to outline the process in the House of Commons and the House of Lords in the making of an Act of Parliament. The process in the House of Commons could have covered the introduction of the bill by the relevant minister or promoter, a possible reference to the different types of bills, the order of readings and stages. The outline of the process in the House of Lords could have included the introduction into this House, the order of readings and stages, the amending role of the House, the 'ping pong' procedure in conjunction with House of Commons together with a possible reference to the effect of the Parliament Acts 1911 and 1949. Reference to the giving of the Royal Assent was credited.

As in some previous sessions, many students wasted time describing Green and White Papers which were not credited, as they are not part of the process in either House. Nearly all students were able to identify some of the stages that a bill passes through and most were able to refer to stages in both Houses. The best answers were those that explained what happened at each stage and identified elements that were distinctive to each one of the two Houses. Some students were also able to explain what happens if the two Houses disagree and to occasions when the Parliament Acts have been used.

##### ***Question 2***

In question 02, students were asked to describe one of three specific influences operating on Parliament in the law making process. The influences were the Law Commission, the media or pressure groups.

In relation to the Law Commission, this could have covered who can sit on the Commission, how it works in investigating issues, its role in codifying and consolidating areas of law and its role in recommending repeals of old law. Example(s) of the commissions work in any of these areas would have enhanced the description.

For pressure groups, answers could have included a general description of the meaning of pressure groups, how and when they can influence Parliament, the effect of their influence, and example(s) of their campaigns and work. In this session, fewer examples of pressure groups were seen, though Fathers4Justice, Greenpeace and the hunting protests were often seen along with reference to recent protests.

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

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

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

### **Question 3**

Question 03 required a discussion of the advantages of the process of parliamentary law making. This discussion could have included the democratic nature of the process which allows for a full discussion of the proposals. In some cases, there is an introduction of the proposed law after a detailed inquiry or Law Commission report. Alternatively, when introduced by the governing party, it will often be giving effect to election manifesto commitments. The process is open and there is the possibility of amendments and improvements following scrutiny of the proposals at Committee stage and in the House of Lords. Finally, reference could be made to the supremacy of Parliamentary law. This question was often well answered with a range of relevant points being made: however, answers were often seen where a brief point was made, without it being able to fully develop the point and discuss why it was an advantage.

## **DELEGATED LEGISLATION**

### **Question 4**

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

Stronger answers gave detailed description of the chosen form and supported the description with relevant examples, and some answers gave detailed reference to relevant enabling Acts. As has been stated in previous reports, many answers which dealt with by-laws referred to the Dogs Fouling of Land Act or its successor, as being a form of delegated legislation. What was needed was reference to by-laws made under the authority of this Act. Many very good responses were seen, particularly to statutory instruments and by-laws. Most students now recognise that they need to use examples to illustrate the use of the type of delegated legislation chosen and many were able to achieve 'Sound' on this question.

### **Question 5**

Question 05 required an explanation of why Parliament needs to delegate law making power. Answers could have included points such as:

- Parliament not being in session when an emergency arises
- the need for detail to fill in outline of primary legislation
- the need for specialist rules
- the need to set a starting date for primary legislation
- the need to update certain matters such as the level of fines or the annual minimum wage
- by-laws deal with local issues
- the need to deal with specific needs of public authorities, eg transport providers.

In contrast to the previous question, answers to this were not so well developed. A number of students were clearly hoping for a question about controls and as a result they tried to incorporate material on controls into their answer. Others seemed thrown by the reference to needs and did not recognise that the points they would have made if the question had asked about advantages were also relevant here. Some answers dealt with advantages only, which received limited credit. Students need to recognise that this question is different from a traditional discussion of advantages and disadvantages of delegated legislation. There were, in contrast, some excellent answers which clearly identified why Parliament needed to delegate its power and which were illustrated with examples.

### **Question 6**

Question 06 required a discussion of disadvantages of delegated legislation. This could have dealt with points such as its undemocratic nature, the volume and lack of publicity, especially for statutory instruments, the need for control, limited scrutiny and control of Executive power, especially due to the volume, the length and expense of judicial review, if there is a need to challenge. Surprisingly, some students who had written very well on question 05 answered this question less convincingly and with fewer examples. Well prepared students did not have too much difficulty and there were many good responses warranting good marks.

## STATUTORY INTERPRETATION

### Question 7

Question 07 required an outline of the purposive approach to statutory interpretation and one of the rules of language.

An outline of the purposive approach could have included that judges are trying to find the intention of Parliament, which is an EU approach involving, at times, applying the Human Rights Act to legislation.

An outline of a rule of language could include:

- the *ejusdem generis* rule where general words follow specific words
- the *noscitur* rule where the meaning of a word is to be found from the context
- the *expressio* rule where the expression of one thing implies the exclusion of another.

Many students struggled to explain the purposive approach clearly and there was often confusion with the mischief rule and a case such as **Smith v Hughes**. Quite a few students were able to describe relevant cases such as **Jones v Tower Boot Co** or **RCN v DHSS**, but then did not convincingly explain how the case illustrated the approach. **Pepper v Hart** was often cited, but its relevance to the purposive approach was not always explained. Answers on a rule of language were generally quite good with case examples clearly illustrating the rule.

### Question 8

In question 08, students were required to explain the literal rule of statutory interpretation. This could have included a definition of the rule being words being given their ordinary grammatical meaning from a dictionary of the date of the case; that words are given the same meaning throughout the Act; that judges respect parliamentary sovereignty by giving words their ordinary natural dictionary meaning even if it results in an absurdity. Example(s) often seen were **Whiteley v Chappell**, **Fisher v Bell** and **Berriman v LNER** and Cheeseman. Most students found this question straightforward and there were many very good responses, with the rule fully explained and relevant cases described in the context of the rule. Often, in stronger answers, two or three cases were explained.

### Question 9

Question 09 required a brief discussion of advantages and disadvantages of the literal rule. Advantages could include points such as judges are applying the will of Parliament, that it is democratic, predictable and certain. Disadvantages could include its rigidity; that the result can be a bad precedent; that in cases such as Berriman it can lead to absurd results; that it cannot be used if words are not in the Act; that there is an assumption that the Act is perfectly written; it cannot be used if the words in an Act are capable of more than one meaning; there is the possible need for Parliament to rectify an error following the case as in **Fisher v Bell**; there is an assumption that Parliament meant the result. Students who answered question 08 well were generally equally confident about advantages and disadvantages and there were many good responses. However, some answers merely repeated case facts which had originally been set out in the previous answer.

## JUDICIAL PRECEDENT

### Question 10

Question 10 required a brief explanation of the role of law reports and what is meant by *ratio decidendi* in the system of judicial precedent.

In relation to the role of law reports, this could have included the need for reporting cases, the content of a law report, who reports are written by, that they are authorised by the judge giving the judgement, and that they can be used in later cases with examples of different sources of reports.

The brief explanation of *ratio decidendi* could have included that it is the reason for the decision which is the binding part of the decision, which has to be followed by other judges, with a case or example in support. Many answers to this question were slightly disappointing. Relatively few students were able to explain the role of law reports effectively, though most knew, in general, what they were. *Ratio* was usually explained very briefly, and although most students were able to refer to an example, fewer were able to explain how it was affected by the hierarchy of courts. Some answers dealt with *obiter dicta* in some detail which could not receive credit.

### Question 11

Question 11 required an outline of two ways in which judges can avoid a binding precedent. This could be any of:

- the Supreme Court using the 1966 Practice Direction, supported by an example such as *Herrington* or *Shivpuri* or *Pepper v Hart*
- the Court of Appeal having the power to overrule any precedent from a lower court in civil cases by referring to *Young v Bristol Aeroplane*; in criminal cases to avoid injustice, possibly supported by an example
- distinguishing, including what this is, who can distinguish and when: an example such as *Merritt v Merritt* distinguished from *Balfour v Balfour* was often seen, though the facts and/or legal principle were often not clearly explained
- overruling, including what this is, who can overrule, with a possible connection to the powers of the Supreme Court and Court of Appeal. The example of *Fitzpatrick v Sterling Homes* was often seen to support this point
- disapproving could include what this is, who can disapprove and when, the effect of disapproving rather than overruling. This was rarely seen.

Some students referred to reversing. Centres should remind themselves that this is not within the specification so no credit could be given to answers referring to this.

Most students talked about distinguishing and the Supreme Court and supported their outline with at least one case reference. Some answers were able to explain clearly and effectively the powers of the Court of Appeal.

### **Question 12**

Question 12 required a discussion of disadvantages of judicial precedent. This could have covered points such as:

- its undemocratic nature in making law
- that a case has to come to court and to reach the higher courts in order to become a precedent
- that in some cases there are multiple reasons for the decision
- in some judgments there may be difficulty in identifying the *ratio*
- that there are a considerable number of precedents and diversity in detail and cases covered in law reporting.

Many answers covered several of these points and stronger answers were able to make connections between them.

## **SECTION B - THE LEGAL SYSTEM**

### **THE CIVIL COURTS AND OTHER FORMS OF DISPUTE RESOLUTION**

#### **Question 13**

Question 13 required a description of the process of arbitration as a form of dispute resolution. This could have included a description of the process of arbitration, including the qualification of arbitrator, how arbitration can come about (from a clause in the agreement), the types of cases dealt with, the nature of the hearing, the outcome, the (limited) possibility of an appeal, and how an award is enforced. Although there were some very good answers to this question, quite a few responses were disappointing. Students were at times confused about the nature of arbitration, by suggesting for example that the arbitrator helped the parties to find a solution. Other students seemed to be describing tribunals rather than arbitration.

#### **Question 14**

Question 14 required an outline of what is meant by mediation and negotiation as alternative forms of dispute resolution. The outline of mediation could have included how the process comes about, who acts as mediator, types of cases dealt with and their process and possible outcomes. The outline of negotiation could include how negotiation arises, types of cases dealt with, the process and possible outcomes. Responses were generally good with most students accurately understanding and outlining the nature of both mediation and negotiation and their respective processes.

#### **Question 15**

Question 15 required a discussion of advantages and disadvantages of either mediation or negotiation.

For mediation, points that could be made for advantages include its speed, the preservation of a relationship, its informality, a lack of publicity and its encouragement by court.

Disadvantages of mediation include the problems of encouraging parties to take part, a possible inability to reach a conclusion, enforcing a decision and possible influence by one party over the other.



For negotiation, points that could be made for advantages include its speed and efficiency, the preservation of any relationship, the lesser cost than going to court, its informality, a lack of publicity and its encouragement by court. Disadvantages of negotiation include possible problems encouraging the parties to take part, a possible inability to reach a conclusion, enforcing a decision and a possible reduced amount of compensation gained.

Although most students offered relevant points whichever option was chosen, few answers were developed and very few were able to refer to an appropriate context, although they had often identified uses in the previous answer.

## **THE CRIMINAL COURTS AND LAY PEOPLE**

### ***Question 16***

Question 16 required students to describe either how jurors qualify and are selected for service or to describe the appointment and selection of lay magistrates.

The description of jury qualification could include coverage of qualification requirements such as age, being on the electoral register, residence in the UK, random selection by Central Summoning Bureau, reasons for not qualifying such as disqualification, discharge, deferral, selection in the jury room and in court, possible vetting and challenges and swearing in.

The description of lay magistrates' selection requirements could have included age, residence, responding to advertisements, requirements of the bench including balance, key personal qualities, interviews and subsequent recommendations by the local advisory committee to the Lord Chancellor who will then subsequently appoint.

Whichever option was chosen, most answers contained a good description and detail of the qualification and selection criteria: at times, answers on lay magistrates tended to concentrate rather too much on training, for which limited credit could be given.

### ***Question 17***

Question 17 required an explanation of the work of lay magistrates, both in and out of court. This could have included deciding questions of bail or custody, hearing evidence in a summary trial, deciding guilt or innocence, deciding sentence on those found guilty or who pleaded guilty. Work on specialist panels (Youth Court, Family Court, Licensing Appeals) was credited. Reference to the sending of cases to Crown Court for trial or sentence could have enhanced the answer. Out of court work could have included issuing warrants and time extensions to the police; other associated roles such as training, visits to prison or schools and possible community involvement also received credit.

Most answers focused on the role in court: beyond this a good number of students referred to one or more of the roles out of court – the most likely being police work such as extensions of custody and the issuing of search and arrest warrants. Other answers either offered little comment on the role out of court or introduced irrelevant material, often relating to qualities needed to be a magistrate or to removal of magistrates

### ***Question 18***

Question 18 required a discussion of advantages of lay persons (jurors and lay magistrates) in the criminal justice process.

This could have covered the idea of the notion of trial by peers, open justice, public confidence, fairness, the limited number of appeals, the cost compared to judge-only trials and a reduction of professional involvement.

There were many good answers, with most students recognising that they needed to consider juries and lay magistrates separately. However, there was less evidence of case examples used to support answers. Sadly, there were a few students who wrote about disadvantages, which received no credit.

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

### ***Question 19***

Question 19 set the scene that Chloe had been badly injured in an accident and wants to claim compensation. Students were required to outline where she could get advice about a possible claim and outline how she could pay for bringing such a claim.

Possible sources of advice could have included a solicitor, the Community Legal Service, the CAB, a claims company, using the internet, a trade union, an insurance company or a motoring organisation. How the claim could be paid for (or financed) could have included using Legal Help, private funding, no win-no fee conditional fees, via insurance policy or union membership. Legal Aid (Representation) would only be available in certain very limited cases.

Although not as popular as other topics in this section, quite large numbers of students answered this topic. Answers were generally good, with many students being able to refer to multiple sources of advice and to multiple sources of funding. Lesser-quality answers tended to be general in detail on both sources and funding.

### ***Question 20***

Question 20 required an explanation of how solicitors qualify. This could have included the need for degree entry, CPE/Diploma for non-law degree, possible reference to Legal Executive route, LPC, training contract, membership of Law Society and application to be called to roll of solicitors. This was generally well answered, with many students able to identify and describe the traditional and alternative routes to qualification.

### ***Question 21***

Question 21 required a comparison and contrast between the work of solicitors and barristers.

This could have included:

- for solicitors: in court, can include work in court general advocacy and extended rights of audience in civil and criminal cases; out of court work could refer to conveyancing, wills and probate, giving advice and drafting papers in a traditional provincial practice, the negotiation of claims, specialist work in city practice and instructing barristers
- for barristers: can include carrying out advocacy in court with an indication of their rights of audience in trials and possible advice and conduct of possible appeal, giving specialist advice out of court, preparation of specialist documents, possible reference to access via solicitor or BarDirect, cab rank and possible reference to work of QC.

Most students could identify aspects of the work of barristers and solicitors, though fewer were able to use this to make an effective comparison. Nevertheless, there were good responses showing awareness of both traditional roles and recent changes.

## **THE JUDICIARY**

### ***Question 22***

Question 22 required an explanation of the role of a judge in either a Crown Court criminal trial or in a civil claim for negligence. Work in a criminal trial could include the making of pre-trial directions, keeping order in court, ruling on law, directing jury on law and evidence and passing sentence on those found guilty. Alternatively, in a civil claim for negligence, the role could include dealing with pre-trial issues such as tracking and case management, hearing evidence and legal arguments, ruling on legal issues during trial, deciding liability and an award of damages or other remedy with a possible reference to their appeal role. This was the least popular topic, and although some students were clearly well prepared for it, others seemed to opt for it without seeming to have much detailed knowledge. Answers to this question tended to be fairly general, though most students were able to gain some marks.

### ***Question 23***

Question 23 required an explanation of how judges are selected and appointed. This could have included initial eligibility, response to advertisements and application, testing, promotion, reference to Judicial Appointments Commission and consideration of application; for inferior judges there is appointment by Lord Chancellor after recommendation by JAC; for superior judges there is appointment by the Queen, after recommendation by JAC. There could have been reference to the Constitutional Reform Act 2005. Stronger answers distinguished between the levels of judge and the different arrangements. In addition good knowledge was shown of the changes introduced by the Constitutional Reform Act 2005. Weaker answers were very general, offering little of relevance or detail.

### ***Question 24***

Question 24 required a discussion of advantages and disadvantages of the methods of selection and appointment of judges. Advantages could have included their legal knowledge and knowledge of court rules and procedure, that selection methods provide a choice of the best applicants, and the independence of JAC. Disadvantages could have included a view that the best lawyers may not apply, the predominance of barristers applying, that the current judiciary is not reflective of the country and that judges may not be experienced/knowledgeable in the area of law they are required to sit in. Responses to this depended on how confidently students had answered the previous question, but there were few detailed or impressive responses.

### **Mark Ranges and Award of Grades**

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### **Converting Marks into UMS marks**

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

**UMS conversion calculator** [www.aqa.org.uk/umsconversion](http://www.aqa.org.uk/umsconversion)