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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 commented in previous reports, students from the same school or college tended to focus on particular topics on this paper. As a result, many answers from that school or college were similar in content. 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 schools and colleges, questions on the legal profession and the judiciary proved popular. All questions in Section A attracted significant numbers of answers with delegated legislation and statutory interpretation proving noticeably more popular than others. In Section B, the questions on criminal courts and lay persons were overwhelmingly the most popular. It was noticeable that few cases or examples were used to support descriptive or evaluative material. As has been pointed out previously, students should, where possible use cases or examples to support their points, as this helps to show real understanding of the topic. Nearly all students complied with the rubric requirements and it appeared that the great majority showed good timekeeping by attempting all nine questions.

SECTION A

PARLIAMENTARY LAW MAKING

Question 1

This question required a brief explanation of the doctrine of Parliamentary sovereignty. This could have included reference to both legal sovereignty and political sovereignty and that one parliament cannot bind its successors. The question also required an outline of one limitation on parliament's sovereignty which could have included reference to devolution, the relationship between UK and EU law, or the need to comply with the *Human Rights Act*. Some very good answers were seen with students displaying a clear understanding of the idea of parliamentary supremacy with reference to Dicey. However many students appeared to be confused over the word 'supremacy' and talked about the supremacy of the Commons over the Lords/Crown. Other weaker answers covered supremacy generally with limited reference to legal or political supremacy.

Most students were able to identify one limitation and often the limitation was the relationship between the UK and the EU. Reference to Factortame was often seen. However weaker answers did not refer to an example and some did not appear to understand the distinction between the EU and the ECHR. A few answers used devolution as an example and, often, this was explained more clearly.

Question 2

This question required:

Firstly, a brief explanation of Green papers and White papers. This could have included:

- for Green papers – their purpose, who is consulted and who can respond to them, the result of this consultation, with an example to support the explanation.
- again for White papers – their purpose, the effect of their issue and again a supporting example.

Secondly, a brief explanation of the process in the House of Commons in the making of an Act of Parliament.

This process 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; further any comments showing the relationship with the House of Lords was credited. This could have included the 'ping pong' procedure or reference to the effect of the *Parliament Acts 1911 & 1949*. Reference to the announcement of the Royal Assent could also be credited. Credit was also given when students were able to explain the different forms of legislation in the context of the House of Commons.

Generally, answers contained much material on the parliamentary process and limited accurate coverage of green papers and white papers.

Many answers showed an understanding that green papers and white papers preceded the publication of the bill and involved some form of consultation, but a good number thought that they were discussed in Parliament and that they were the initial stages of a bill in parliament. Hardly any examples of either green papers or white papers were seen.

There were many excellent answers to the process in the House of Commons showing good understanding of the order of stages and useful coverage on what was done in each stage. Students often continued to go beyond the House of Commons by referring in detail to the roles of the Lords and Monarch although this was of limited reference to the question.

Question 3

This question required a discussion of disadvantages of the parliamentary law making process. This could have included reference to any delay in dealing with issues raised:

- that often, political influences dominate Parliament rather than a genuine debate on the merits of a proposed law
- that due to the role of the Lords and Monarch in the process there are issues of democracy
- that laws produced use complex language which cannot be understood by a layman,
- that there is often piecemeal development of law on top of previous law and therefore there is a need to read more than one document to know what the law is on a topic,
- that any law produced is often a compromise between the views of the Commons and Lords

Many students were able to refer to the issues such as time involved, delay, the political debate and complexity of language used, but there were few attempts to support points with examples or any form of supporting example.

DELEGATED LEGISLATION

This was a very popular topic though control of such legislation was often the weakest answer.

Question 4

In this question students were asked to describe two forms of delegated legislation. The choice of delegated legislation could have been from 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
- ministers consult, draft and lay the law before Parliament
- 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, usually transport providers. Examples often seen 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 the Council. Again an example of such Orders would have enhanced the description. An example often seen was reference to Orders made after the 9/11 terrorist attacks and the foot and mouth outbreaks.

On the whole, description of the different forms of delegated legislation was well answered, especially when the description was supported by an example. Sadly many answers on by-laws still referred to the *Dogs (Fouling of Land) Act* as a form of by-law and some answers were unable to include by-laws made by private companies such as bus and train providers. The weakest answers covered statutory instruments, with examples often not clearly explained and referring only to the enabling Act, not the instrument made under the Act. A few students confused the types of delegated legislation; this was especially seen when describing Orders in Council.

Question 5

This question required a description of Parliamentary controls on delegated legislation. This could have included reference to the affirmative resolution procedure, the negative resolution procedure, the repealing of primary legislation, scrutiny committees and questions asked in Parliament.

This should have been a straightforward question and those who had prepared well and clearly understood the different controls had no difficulty scoring high marks. But some answers were rather general or were confused on the details of negative and affirmative resolutions. Some students covered a narrow range of controls and others talked about issues like publication or the power of ministers to approve by-laws, which are not parliamentary controls. A few students wrote about judicial rather than parliamentary controls, which could receive no credit.

Question 6

This question required a discussion of why Parliament delegates law making power. The discussion could have covered 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
- updating the amount of fines or the annual minimum wage
- dealing with local issues
- dealing with specific needs of public authorities such as transport providers

This question was generally well answered, even by students who had been confused about controls. Answers often raised a full range of useful comments. If these comments were developed to include reference to examples, a valuable answer was seen. Sadly, some students wasted time by dealing at length with the reasons why delegation was not a good idea which could not receive credit.

STATUTORY INTERPRETATION

Question 7

This question required an outline of external aids to interpretation and one of the rules of language. The outline of external aids could have made the initial point that they are documents outside the Act which help to give the meaning to words in an Act. These aids could include any of dictionaries, external treaties, reports on which Act is based, the *Interpretation Act*, Hansard reports of parliamentary debates, any relevant Law Commission reports. It would have enhanced the outline if reference was made to an example.
An outline of one of the rules of language could have included coverage of either:

- 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 in which it appears, or
- the *expression unius* rule where the expression of one thing implies exclusion of another.

Whichever rule was covered, the outline should have included reference to a case example to illustrate.

The majority of responses were very good. Many students were able to outline a range of external aids with examples and to identify a rule of language. Dictionaries and their use, Hansard, international treaties, law reports were all referred to as external aids and often supported by useful and relevant examples. Students should be encouraged to stress that external aids are found outside the Act and not the 'court' and that Hansard is not a record of past court cases. In weaker answers, the outline of the rule chosen was at times confused and unsupported by a case example. However, many candidates were able to explain either the *ejusdem generis* rule or the *expressio unius* rule and illustrate it with a relevant case example.

Question 8

This question required a description of the golden rule of statutory interpretation which can be used if using the literal rule is at variance with the intention of Parliament or results in an absurd result. It could have referred to the narrow approach and perhaps used ***R v Allen*** to illustrate and the broad approach using ***Re Sigsworth*** and or ***Adler v George*** to illustrate. There were many good responses and most students were able to explain the golden rule, at least in general terms, and refer to case examples. A few confused it with the mischief rule or purposive approach and used cases such as ***Smith v Hughes*** to attempt to explain it. Stronger answers were able to describe the purpose of the golden rule and its relationship with the literal rule. The narrow and broad approaches were often well explained with well used examples. Weaker answers were only able to describe the distinction between the narrow and the wider approaches or no more than facts of relevant cases with little attempt to show their relevance.

Question 9

This question required a brief discussion of advantages and disadvantages of the golden rule. Points made for advantages could have included that include fewer absurd and unjust results being made as compared to the use of the literal rule, perhaps referring to cases such as ***Berriman*** to illustrate the point. Also it could be said in its favour that Parliament would not have wanted to pass laws that produced unfair results. Possible points to raise for disadvantages could have been that it depends on each individual judge to decide what is an absurdity or a repugnant result. Perhaps because of this it can be said that it has an undemocratic nature.

The need to deal with both advantages **and** disadvantages threw some students. Stronger answers nevertheless dealt well with the central issue of absurdity and injustice that can be seen when using the literal rule and were well balanced between advantages and disadvantages. Most students were able to offer some relevant comments, though weaker answers wrote general responses around the themes of avoiding undesirable results or following the intentions of Parliament or being undemocratic. There was often a contrast between stronger answers which were focused and precise and weaker answers which showed that students were unsure of the specific benefits and drawbacks of the rule. In fairness, it is probably the hardest of all the rules to understand or categorise, having, as it does, links to the literal rule as well as allowing some flexibility to judges.

JUDICIAL PRECEDENT

Question 10

This question required an outline of the main features of precedent and could have included:

- the hierarchy of courts with an outline of either the civil and/or criminal court structure referring to which courts bind and are bound by others
- an explanation of *ratio decidendi* - the binding part of the decision and distinguished from *obiter dicta*, with case examples of each. Often *Howe* was used to illustrate ratio; occasionally ***DPP v Smith*** was used to illustrate both ratio and obiter.
- coverage of the law reporting system, perhaps showing where a law report can be found , such as referring to the All England Law reporting series and the purpose of such reports.

On the whole, this was a well answered question and many students were able to achieve a good level of marks. Those who covered the range of features with an example or two scored highly. However, some responses were quite narrow and focused on one aspect, usually the hierarchy of the courts or *ratio*. Unusually, students often did not explain court hierarchy very well and became bogged down in detail, especially becoming embroiled in discussions of the Practice Statement and the powers of the Court of Appeal to depart from precedent. In some answers understanding of obiter was unclear.

Question 11

This question required a brief explanation of overruling and how the Supreme Court can avoid precedent. Overruling could have covered which court can overrule and when, perhaps supported by a case example. The brief explanation of Supreme Court avoiding precedent required an explanation of the 1966 Practice Direction and when it can be used with an explanation of at least one case example.

Most students understood and briefly explained the concept of overruling, though a good number confused it with reversing. Many used ***Herrington*** as an example. It was also common to see examples of reversing used to support a description of overruling. Most answers were on stronger ground showing how the Supreme Court has the ability to avoid following binding precedent with reference to the Practice Statement; however, it was disappointing to see the number of answers that used the cases of ***Balfour and Merritt*** to illustrate the Practice Statement. Stronger answers used ***Herrington*** again or ***Shivpuri*** or ***Pepper v Hart*** to illustrate its use.

Question 12

In this question students had the choice of discussing either advantages or disadvantages of judicial precedent.

For a discussion of advantages answers could have included:

- its flexibility to deal with new situations such as in ***R v R***,
- that it deals with real cases that come to court
- that a decision provides detailed rules for later cases and for lawyers to advise their clients as to the state of the law
- that it is just that decisions are consistent
- that decisions are authoritative and impartial as they are made by qualified judges.

A discussion of disadvantages could have included that:

- it is an undemocratic way of making law
- in order for a precedent to be made a case has to come to court, and particularly the higher courts. In cases such as ***R v Brown***, and other cases in the Supreme Court, there may be multiple reasons for a decision, making it difficult at times for judges and lawyers to identify the ratio
- that over time there have developed a number of precedents which might make it difficult to find a suitable precedent.

For some students, there was difficulty in selecting one of the options (advantages or disadvantages) and answers at times discussed elements of both. Many students chose to discuss advantages and comments on flexibility, certainty, predictability and advising clients on their position were often seen. Quite a few answers argued that the main advantage is that precedent saves the court money which should not be seen as a legally reasoned advantage, though it is obviously a consideration for potential litigants. Stronger answers were well informed but some students seem to have difficulty developing or illustrating their points with cases, even though this should be one of the most obvious answers in which to use them.

SECTION B - THE LEGAL SYSTEM

THE CIVIL COURTS AND OTHER FORMS OF DISPUTE RESOLUTION

Question 13

In this question students were required to describe the operation of Tribunals. This could include reference to the qualification of the panel, how tribunals can come about, either statutory such as employment or disciplinary such as Solicitors or the FA, coverage of the nature of the hearings, and the process, possible outcomes and appeals, the enforcement of awards. Credit was given to reference to *Tribunals Courts and Enforcement Act* structures which have been in place for some time now.

Answers varied on this topic. Some tended to focus on the structure of the system, with relatively little on process. A few confused tribunals with arbitration and other forms of ADR. However, there were many stronger, detailed answers on describing the origins of the system, types of cases, processes, outcomes and appeals. Stronger answers showed good knowledge of the tiers, though students from some schools and colleges showed little awareness of the tiered system.

Question 14

In this question students were asked to briefly describe the civil courts that can deal with a civil claim for negligence and to outline the process of negotiation.

Coverage of the courts could include reference to the County Court or to the High Court noting the financial limits and with possible reference to tracking. Coverage of possible appeals was required with reference to the Court of Appeal and Supreme Court. Credit was given to reference to any grounds of appeal and orders that the appeal courts could make.

The outline of the process of negotiation could have included reference to who carries out the negotiation, any possible forms of negotiation, the type of cases that can be dealt with, outcomes and the effect of either successful or unsuccessful conclusion and lack of appeal rights.

Stronger answers showed good awareness of both the courts and the process of negotiation. However weaker answers often covered either courts or the process of negotiation. There were often lengthy and detailed descriptions of courts, strangely both civil and criminal, with little or no reference to negotiation. Answers on negotiation tended to be brief with limited reference to courts. It was commonly stated that the fast track limit is up to £15 000, despite it having changed to £25 000 in April 2009, and that a third party negotiator is used in negotiation.

Question 15

In this question students were asked to discuss advantages and disadvantages of using civil courts as a method of dispute resolution.

Discussion of advantages could have included that:

- it is a resolution by an impartial tribunal which has considerable authority
- there can be a hearing of all the evidence in public
- there will be a certain outcome
- there may be a right of appeal to a higher court.

Possible disadvantages could include:

- the need for and cost of legal representation
- the likely award of costs against the loser
- the formality
- if legal representation is not used there may be an imbalance between the parties
- there is likely to be a delay in getting a case to court
- that a court case is confrontational and is unlikely to preserve any relationship that the parties had
- that a public hearing may result in unwelcome publicity.

This was generally well answered, with most students able to offer some relevant comment. Points commonly seen were expertise, a definite and enforceable outcome, right of appeal against cost, formality and unwanted publicity. However it was seen that many students had misread the question and answered it based on advantages and disadvantages of ADR rather than the use of the civil courts. This received only limited credit.

THE CRIMINAL COURTS AND LAY PEOPLE

Question 16

In this question students were asked to describe how jurors qualify and are selected for service.

Basic jury qualification could have included reference to age, being on the electoral register, residence and random selection by the Central Summoning Bureau. Reasons for not qualifying were also required. These could have included disqualification, discharge, deferral, excusal and any other good reason for not serving. Selection by a ballot in the jury room and in court was also required. Reference to vetting, challenges and swearing in was credited. There were many examples of accurate and detailed answers which dealt with both qualification and selection. This showed that many students were knowledgeable and well prepared. However there were some basic errors including those who confused jurors with lay magistrates and a number of answers stating that police and lawyers are ineligible. By contrast, there were a few students whose knowledge of the rules was well developed as they were able to show when a policeman or barrister could possibly be discharged from service. Weaker answers tended to finish when they had discussed qualifications and disqualifications without continuing to consider selection.

Question 17

In this question students were required to explain the work of lay magistrates. This could have included reference to their deciding bail or custody issues pre-trial. At trial, magistrates hear evidence, decide guilt or innocence, and perhaps on advice from their clerk, decide an appropriate sentence. Credit was given to reference to referring cases to Crown Court for trial or sentence, issuing warrants and the work of specialist panels such as the Youth Court, Family Court or Licensing Appeals Panel.

Answers to this question were mixed. While there were some very thorough and wide ranging responses that earned high marks, there were also other candidates who concentrated on very narrow aspects of their work such as how magistrates reach their verdicts, with little reference to any prior court hearing. A surprising number of students introduced material on selection, social origin or training of lay magistrates, which could not be credited.

Question 18

In this question students were required to discuss disadvantages of using lay persons in the criminal justice process. For the higher marks this would have required reference to both lay magistrates and juries.

Possible points that could have been made included:

- that there are occasional examples of perverse verdicts or inconsistent sentencing which cause the public to doubt the value of using lay persons,
- there may be feelings of possible bias towards (or indeed against) the police or prosecution,
- the make-up of the panel may not be representative or in the cases of juries there may be issues for those required to attend
- that there may be influence of the clerk for lay magistrates and of the lawyers, the judge or other members for the jury and that no one knows how juries reach their verdicts
- the case may acquire national or local notoriety which may result in media pressure,
- that particularly for some jury trials the evidence may be too complex

Again there were many strong answers to this question. The strongest made points which were supported with a case or example. Reference to ***Young***, ***Ponting***, ***Owen*** and the ***Taylor sisters*** was often seen to support points about jury trials, though points about magistrates were often unsupported. Weaker answers tended not to distinguish between jurors and lay magistrates and/or did not support a point with any example or authority.

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

Question 19

In this question, students had to choose to either outline:

- where a person arrested for a serious criminal offence could get legal advice and representation and how this could be paid for

or

- where a person badly injured in an accident could get legal advice about a civil claim for damages and how this could be paid for.

For the criminal option, reference could have been made to the availability of a 24 hour duty solicitor at a police station, for a duty solicitor at Magistrates Court (first appearance only), and representation at Magistrates and Crown Courts by solicitor and/or barrister.

This could be paid for by private finance or by the free 24 hour duty solicitor scheme at police station, free duty solicitor at Magistrates Court (though there are limits on the types of case covered by this scheme), and Legal Representation Orders for Magistrates and Crown Court hearings. Reference to the qualifying tests for these Orders, (means and interests of justice), was credited.

For the civil option, the possible sources of advice could have included from a solicitor, from the Community Legal Service, a CAB office, a claims company, via the internet, a trade union or insurance company or motoring organisation. A civil claim can commonly be paid for by private funding or no win no fee conditional fees. However they may also be funded by

insurance policy or union membership, Legal Help or Legal Aid (Representation) in certain very limited cases.

Whichever choice was made, correct terminology and information needed to be included. The more common choice was civil actions and how they are paid for. Stronger answers were aware of different sources of advice, how they could be paid for and used appropriate terminology. Weaker answers, especially when dealing with criminal cases, were confused over where advice could be obtained, often suggesting CAB, insurance companies or trade unions, and/or how it could be paid for, often suggesting no win no fee.

Question 20

In this question students were required to describe the training and qualifying for barristers. This could have included that there is a requirement for degree entry. For non-law degree entrants there is the need to study the CPE, also known as the GDL, and for all entrants to study the BVC, now known as the BPTC. Some detail of what is covered in this course would have enhanced the answer. Following this there is the need to enrol with Bar Council and Inns of Court, to serve two terms of pupillage, the call to the Bar, and finally find a place in chambers.

Generally, answers gave an accurate and detailed description of the training and qualification stages and included a little detail of some stages. Weaker answers tended to merely list the stages with little description of what took place. Alternatively some stages were confused with the training and qualification of solicitors.

Question 21

In this question students were required to discuss advantages and disadvantages of using solicitors and barristers to resolve legal disputes. Answers could have concentrated either on solicitors and barrister's professions individually or dealt with issues common to both professions

Points that could have been made for advantages could have been:

- the availability of lawyers – that they can be found in most towns, often they have phone lines or internet sites that might give advice; barristers have for some types of cases direct access;
- specialist knowledge and ability to deal with certain types of dispute;
- cost – that for state funding and no win no fee cases they are only available through lawyers

Points that could have been made for disadvantages could have been:

- availability – some firms may choose not to deal with certain types of work and they may not be available out of traditional working hours
- delay – often involving a lawyer will delay the resolution of a case and introduce an element of confrontation which may not have previously existed.
- cost – if lawyers become involved or prolong a case this will generally increase the costs of a case
- language – the lay person may become confused with the language used by lawyers

Many answers tended to be fairly general, covering issues such as availability, cost and, specialism, and, in many cases points were made with limited development. However, there was evidence in some answers of good reasoning and thought and points were more developed.

THE JUDICIARY

This was not a popular topic and answers showed that students either knew the material and scored high level marks, or were able to make brief, very general and sometimes inaccurate points.

Question 22

This question required a description of how judges are trained for their work. This could have referred to the fact that judicial training is the responsibility of the Judicial Studies Board. There is initial practical training after appointment on how to run a court, sitting on cases with experienced judges and undertaking visits followed by annual training and induction courses when receiving new responsibilities and training following promotion to higher levels. Reference to mentoring would have been credited.

A mix of answers was seen. Stronger answers were able to write in detail about judicial training for all levels of judiciary covering both initial and continuing training. Weaker answers spent too much time dealing with pre-judicial appointment history of a judge and its impact on appointment which could receive limited, if any, credit.

Question 23

This question gave students a choice to describe the work of a judge in either a civil court claim for negligence or in a crown court trial.

Criminal work could include reference to pre-trial directions and administrative hearings; in court keeping order, ruling on law and evidence, directing the jury on the law and evidence and passing sentence on guilty offenders.

Civil work could have included reference to dealing with pre-trial issues such as tracking and case management, hearing evidence and legal arguments during a trial and ruling on any legal issues, deciding liability and the award of damages or other remedy.

Generally, and possibly surprisingly, the choice for most was for civil claims. Stronger answers tended to be able to write in detail about pre-trial work as well as work during the trial. Weaker answers tended to cover work in very general terms, perhaps merely listing what is done.

Question 24

This question required a discussion on why it is important for judges to be independent.

This discussion could have included reference to the theory of Separation of Powers, and that without an independent judiciary it could be possible for judges to be influenced in their decisions by either the executive or the legislature. Having an independent judiciary leads to public confidence in judiciary who are able to uphold the Rule of Law. Being independent means that their decision making is free of pressure, and they are able to hear cases of judicial review and other cases involving the executive who have to follow their decisions. The subject of judicial independence and its historical, legal and political significance is clearly not well understood. Most answers tended to be very general in nature, explaining what judicial independence is without going the further step to say why it is an important principle. Few answers went beyond the idea that judges should be free from pressure – although a minority developed the point quite well.

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.

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